DEPARTMENT OF CORRECTIONS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Corrections, pursuant to the authority set forth under section 5(c) of the Jail Improvement Act of 2003, effective January 30, 2004 (D.C. Law 15-62; D.C. Official Code § 24-201.71(c)) (2007 Supp.), and Mayor's Order 2006-53 (June 30, 2006), hereby gives notice of his intent to repeal and replace Chapter 6 of Title 28 of the District of Columbia Municipal Regulations (DCMR), in order to allow pretrial detainees in addition to sentenced inmates to earn good time credits for participation in educational and vocational programs and services with or without completion of the program in order to account for the shorter duration of the average length of stay.

The proposed rules will be submitted to the Council for a forty-five (45) day period of review. The Director also hereby gives notice of the intent to adopt these rules, in final, in not less than thirty (30) days from the publication of this notice in the D.C. Register or upon approval of the rules by the Council, whichever occurs later.

Chapter 6 of Title 28, DCMR is repealed and replaced with the following:

CHAPTER 6 GOOD TIME CREDITS

600 APPLICABILITY

600.1 This chapter shall apply to every resident of a District of Columbia correctional institution who is a pre-trial detainee or serving a sentence on and after April 11, 1987, imposed after conviction of a violation of a District of Columbia criminal law by a court in the District of Columbia.

601 LIMITATIONS ON CREDITS

601.01 Good time credits shall not reduce the minimum sentence of an inmate convicted of a crime of violence as defined by the District of Columbia Good Time Credits Act of 1986, effective April 11, 1987 (D.C. Law 6-218; D.C. Official Code §24-221.01, et seq.) (2009 Supp.) by more than fifteen percent (15%).

601.02 Good time credit shall not apply to a sentence of civil contempt.

601.03 An inmate may not earn more than twelve (12) good time credits per calendar month under this chapter.

602 PURPOSE AND SCOPE OF GOOD TIME CREDITS

The Department of Corrections awards good time credits to be applied after sentencing to pre-trial detainees or sentenced inmates for anticipated future good conduct and satisfactory performance or progress in rehabilitative programs, work

tasks, and special projects. Good time credits for anticipated good behavior and special projects provide inmates with an incentive to maintain good behavior and enroll in institutional programs for purposes of self development and/or rehabilitative objectives. The good time credits for good behavior are revoked when inmates engage in disciplinary violations.

603 APPLICABILITY OF GOOD TIME CREDITS

603.01 Each inmate committed to the Department of Corrections, pretrial or sentenced, may be eligible for credits to be applied to his or her sentence pursuant to the District of Columbia Good Time Credits Act of 1986, effective April 11, 1987 (D.C. Law 6-218; D.C. Official Code § 24-221.01, *et seq.*) (2009 Supp.), in one (1) or more of the following categories:

(a) Good behavior;

(b) Rehabilitative programs;

(c) Work detail; and

(d) Special projects.

603.02 Credit shall be calculated from the first day of incarceration but will not accrue until the 16th day of incarceration. The credit will apply once an inmate is sentenced. One (1) credit is equal to one (1) day of a reduction in sentence. Except in the case of good behavior credit awarded pursuant to § 603.04, all credits shall accrue for participation in rehabilitative programs, work details, and special projects, in the following manner:

(a) sixteen (16) to twenty (20) days: one (1) credit;

(b) twenty-one (21) to twenty-five (25) days: two (2) credits; and

(c) twenty-six (26) to thirty-one (31) days: three (3) credits.

Participation in any combination of programs during a calendar month shall not accrue more than twelve (12) days of credits regardless of credits earned.

603.03 Once an inmate has been released, either by supervised release or expired release, good time credits awarded during a previous period of incarceration are of no further effect either to shorten the period of supervision or to shorten the period of incarceration which the inmate may be required to serve for violation of supervised release.

603.04 Good behavior credit.

(a) An inmate shall be awarded good behavior credit at the inception of his or her incarceration for anticipated future good behavior and institutional adjustment which will result in the automatic deduction of the inmate's term of commitment for future good conduct.

(b) The deduction described in paragraph (a) of this subsection shall be calculated from the first date of commitment at a rate of up to three (3) days for each calendar month during the inmate's commitment.

(c) An inmate may not receive credit under this subsection during any period for which the inmate is not receiving credit for the inmate's term of commitment including a period where the inmate's sentence is stayed or the inmate has escaped.

(d) The amount of good behavior credit is subject to disciplinary revocation under § 28-604 of this chapter.

603.05 Rehabilitative programs credit.

(a) An inmate shall be eligible for a good time credit deduction from the inmate's term of commitment for demonstrating satisfactory progress in one (1) or more self improvement programs.

(b) The deduction described in paragraph (a) of this subsection shall be calculated from the first day the inmate participates in the program at a rate of up to three (3) days for each calendar month of full participation during the inmate's commitment.

603.06 Work detail credit.

(a) An inmate shall be eligible for a good time credit deduction from the inmate's term of commitment for demonstrating satisfactory performance of work tasks assigned.

(b) The deduction described in paragraph (a) of this subsection shall be calculated from the first date of assignment and continue through termination from the detail assignment or release from custody at a rate of up to (3) days for each calendar month during the inmate's commitment.

603.07 Special projects credit.

(a) An inmate shall be eligible for a good time credit deduction from the inmate's term of commitment for demonstrating satisfactory progress in a designated non-recurring special project.

(b) The deduction described in paragraph (a) of this subsection shall be calculated from the first date of assignment and continue through the completion of the assignment or as long as the inmate is committed to the Department of Corrections, whichever is shorter, at a rate of up to three (3) days for each calendar month during the inmate's commitment.

604 DISCIPLINARY REVOCATION OF GOOD TIME CREDIT

604.01 Good behavior credit may be revoked as the result of a disciplinary violation imposed by the Department of Corrections pursuant to the procedures set forth in the Department of Corrections Policy on Inmate Discipline and Administrative Housing except as provided in section § 604.03.

604.02 If the inmate has been found guilty of one or more Class I, Class II or Class III offenses, good behavior credits may be revoked during the disciplinary process, as may be appropriate, within the discretion of the Department of Corrections Disciplinary Board in accordance with the following:

(a) Class I Offenses: up to 100% of credits may be revoked.

(b) Class II Offenses: up to 50% of credits may be revoked.

(c) Class III Offenses: up to 25% of credits may be revoked.

604.03 Good time credits for participation in rehabilitative programs, work detail, and special projects, once awarded, may not be revoked.

604.04 Good behavior credit revoked under this section may be restored under § 605.

605 RESTORATION OF REVOKED GOOD BEHAVIOR CREDIT

605.01 An inmate may submit an application for the restoration of good behavior credit revoked under § 604.

605.02 Application as described in § 605.01 shall be made to the Warden, who shall consider the following factors when making a recommendation;

(a) The severity of and circumstances of the disciplinary violation that resulted in revocation;

(b) The inmate's disciplinary record during the current incarceration;

(c) The inmate's rehabilitation efforts during the current incarceration period; and

(d) The inmate's demonstrated positive adjustment since the violation and revocation occurred.

605.03 Good behavior credits may be restored to the inmate at the following rate;

(a) Up to 50 percent (50%) of the total credit revoked if the inmate has been free of any subsequent disciplinary violations for six (6) months; or

(b) Up to 100 percent (100%) of the revoked credit if the inmate has been free of disciplinary violations for twelve (12) months.

605.04 An inmate has no entitlement to approval of restoration of revoked credit.

605.05 An inmate may appeal the Warden's decision to revoke good behavior credit under § 605.02 to the Director of the Department of Corrections by submitting a letter to the Director.

606 RECORDS MANAGEMENT OF GOOD TIME CREDITS.

606.01 The Director shall maintain a system for administering good time credits for each inmate.

606.02 The record of good time credits shall:

(a) Start from the first date the inmate is committed to the Department of Corrections;

(b) Contain entries reflecting good time credits granted, revoked, or restored; and

(c) Reflect a current and accurate record of good time credits affecting an inmate's term of commitment.

606.03 The Director shall ensure that staff responsible for maintaining a record of good time credit are notified within five (5) days after:

(a) The first date an inmate is assigned to and subsequently removed from a rehabilitative program, a work detail, or a special project;

(b) Revocation of an inmate's good behavior credit; and

(c) The Warden's or Director's approval to restore an inmate's revoked good behavior credits.

699 DEFINITIONS

For purposes of this chapter, the following terms shall have the meaning ascribed:

"Department of Corrections facility" - a facility that houses an inmate committed to the District of Columbia Department of Corrections.

"Disciplinary violation" - a guilty finding consistent with the Department of Corrections Policy on Inmate Discipline and Administrative Housing for any institutional Class I, II, and III offenses as defined in Chapter 5 of this Title.

"Disciplinary Board" – a Board established consistent with the Department of Corrections Policy on Inmate Discipline and Administrative Housing that conducts hearings, makes findings and imposes appropriate sanctions for incidents of inmate disciplinary violations.

"Expired Release" - that an inmate's sentence has expired, requiring the release from incarceration without supervision of an inmate:

(a) Who has actually served the maximum term of commitment under which the inmate is incarcerated pursuant to District of Columbia Good Time Credits Act of 1986, effective April 11, 1987 (D.C. Law 6-218; D.C. Official Code §24-221.01, et seq.) (2009 Supp.); or

(b) Who has served the term of commitment less the diminution credits awarded pursuant to District of Columbia Good Time Credits Act of 1986, effective April 11, 1987 (D.C. Law 6-218; D.C. Official Code §24-221.01, et seq.) (2009 Supp.).

"Good time credit" - means either good behavior credit or other credit earned as a result of participation in various inmate programs.

"Incarceration" - detention resulting from a conviction, sentence, or commitment to the custody of the District of Columbia Department of Corrections.

"Maximum expiration date" - the date an inmate's term of commitment expires with a period of supervised release to follow.

"Rehabilitative programs credit" - a diminution credit to a sentence pursuant to District of Columbia Good Time Credits Act of 1986, effective April 11, 1987 (D.C. Law 6-218; D.C. Official Code §24-221.01, *et seq.*) (2009 Supp.) for demonstrating satisfactory progress in programs providing opportunities for self improvement.

"Special projects credit" - a diminution credit to a sentence pursuant to District of Columbia Good Time Credits Act of 1986, effective April 11, 1987 (D.C. Law 6-218; D.C. Official Code §24-221.01, et seq.) (2009 Supp.) for demonstrating satisfactory progress in designated, non-reoccurring special projects.

"Supervised release" - release from incarceration subject to a period of supervision pursuant to D.C. Code § 24-404. District of Columbia Good Time Credits Act of 1986, effective April 11, 1987 (D.C. Law 6-218; D.C. Official Code §24-221.01, et seq.) (2009 Supp.)

"Supervised release date" - the date of release from incarceration computed by subtracting the credits the inmate may be entitled to pursuant to District of Columbia Good Time Credits Act of 1986, effective April 11, 1987 (D.C. Law 6-218; D.C. Official Code §24-221.01, et seq.) (2009 Supp.) from the maximum expiration date.

"Term of commitment" - the period of an inmate's current incarceration. The term "term of commitment" includes the following:

(a) A single sentence;

(b) A combination of concurrent sentences (a concurrent sentence is two (2) or more sentences that run simultaneously), in which case the term of commitment is the period of commitment between the earliest starting date of those sentences and the latest expiration date of those sentences;

(c) A combination of consecutive sentences (a consecutive sentence is one (1) or more sentence(s) following another in uninterrupted succession), in which case the term of commitment is the period of commitment between the starting date of the first consecutive sentence and the expiration of the last consecutive sentence;

(d) A combination of concurrent and consecutive sentences (aggregated sentences or sentences resulting in a common sentencing scheme), in which case the term of commitment is the period of commitment between the earliest starting date of the sentences and the last expiration date of the sentences;

(e) A combination of sentences imposed before and after release on parole or probation and the probation or parole is revoked, in which case the term of commitment is the period of commitment between the earliest starting date of the sentences and the latest expiration date of the sentences, excluding time out of custody for which credit is not allowed. A parole violation sentence is a period of confinement imposed by the United States Parole Commission. Supervised Release (Probation) is a period of confinement imposed by the court.

"Work detail credit" - a diminution credit to a sentence pursuant to District of Columbia Good Time Credits Act of 1986, effective April 11, 1987 (D.C. Law 6-218; D.C. Official Code §24-221.01, et seq.) (2009 Supp.) for demonstrating satisfactory performance of a work detail assigned pursuant to the institutional work program.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the General Counsel, Department of Corrections, 1923 Vermont Avenue, N.W., N102, Washington, D.C. 20001. Copies of these rules may be obtained at the address stated above.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT ON DISABILITY SERVICES

NOTICE OF PROPOSED RULEMAKING

The Director of the Department on Disability Services, pursuant to D.C. Official Code § 7-761.09 (2007 Supp.), hereby gives notice of the adoption of the following proposed rulemaking. This proposed rulemaking will amend Title 29, Chapters 1 and 2 of the D.C. Municipal Regulations (DCMR), which govern the Department on Disability Services, Rehabilitation Services Administration (DDS/RSA).

This proposed rulemaking clarifies the administrative review process and the payment of expenses for post-secondary education and training. This proposed rulemaking is necessitated by a recent administrative ruling, which warrants DDS/RSA to clarify immediately its regulations concerning its administrative review meeting process. This proposed rulemaking clearly establishes that the administrative review meeting is a non-binding, non-adversarial component of the Agency's informal dispute resolution process.

In light of this ruling, DDS/RSA is amending its current regulations to expressly convey the legislative intent of this process, which provides a non-binding and non-adversarial informal administrative review meeting process for reviewing service provision disputes before mediation and/or an impartial due process hearing. The proposed rulemaking also clarifies rates DDS/RSA will pay when a DDS/RSA consumer chooses to attend a Washington, D.C. metropolitan private university rather than a public university located in the Washington, DC metropolitan area, which provides similar programs and supports. The proposed rulemaking adds a new section, which establishes mediation as a formal dispute resolution process for resolving determinations that affect the provision of vocational rehabilitation services.

This proposed rulemaking will become final upon the expiration of the thirty (30) day notice and comment period and upon publication of a NOTICE OF FINAL RULEMAKING in the D.C. Register.

Title 29, Chapter 1 of the DCMR is amended to read as follows:

All references to the "Office of Fair Hearing" shall be replaced by "Office of Administrative Hearings," as prescribed by D.C. Official Code §§ 2-1831.02, 2-1831.03, and 7-761.08 (b).

All references to the "Vocational Rehabilitation Services Program" shall be replaced by "Vocational Rehabilitation Services Division."

All references to "administrative review" shall be replaced by "informal administrative review."

All references to "working days" shall be replaced by "business days."

29-122. POST-SECONDARY EDUCATION AND TRAINING.

Title 29, Chapter 1, Section 122.3 will be amended to read:

122.3 The Rehabilitation Services Administration shall pay for post-secondary tuition costs in accordance with §§ 122.4, 122.5, and 122.6, and only if the academic program(s) is necessary to achieve the consumer's vocational goal.

Title 29, Chapter 1, Section 122.4 will be amended to read:

122.4 If a public post-secondary institution ("public institution") located in the Washington, D.C. Metropolitan Area ("Area") offers an academic program necessary to achieve the consumer's vocational goal and the consumer chooses to attend that institution, the Rehabilitation Services Administration shall pay the published tuition rate of that particular public institution;

Title 29, Chapter 1, Section 122.5 will be amended to read:

122.5 If a public institution located in the Area offers an academic program necessary to achieve the consumer's vocational goal, but the consumer chooses to attend a private post-secondary institution ("private institution") that is also located in the Area, the Rehabilitation Services Administration shall pay the published tuition rate of the University of the District of Columbia;

Title 29, Chapter 1, Section 122.6 will be amended to read:

122.6 If either a public or private institution located in the Area offers an academic program necessary to achieve the consumer's vocational goal, but the consumer chooses to attend a post-secondary institution (whether public or private) that is located outside of the Area, the Rehabilitation Services Administration shall pay no more than:

(a) Three times the tuition rate published by the University of the District of Columbia for the applicable number of credit hours and academic term; or

(b) The published tuition rate for the necessary training program that is available within the Area if the training program is not based on credit hours.

29-123. THE ENTREPRENEURIAL PROGRAM.
29-124. CLIENT PARTICIPATION IN THE COST OF SERVICES.
29-125. OWNERSHIP OF GOODS
29-126. ORDER OF SELECTION OF SERVICES.
29-127. TRANSITION SERVICES FOR SECONDARY SCHOOL STUDENTS.

Title 29, Chapter 1, Section 135 will amend its Section Heading to read:

29-135. VOCATIONAL REHABILITATION (VR) DUE PROCESS SCOPE AND PROCEDURES

Title 29, Chapter 1, Section 135.1 will be amended to read:

135.1 The purpose of these regulations is to establish procedures pursuant to the Rehabilitation Act of 1973, as amended, and 34 C.F.R. § 361.57 which provide an applicant or consumer procedures for resolving disagreement with any determination concerning the furnishing or denial of vocational rehabilitation services.

Title 29, Chapter 1, Section 135.2 will be amended to read:

135.2 An applicant or consumer of the Vocational Rehabilitation Services Division (VRSD) or Division of Services for the Blind (DSB), who is dissatisfied with any determination concerning the furnishing or denial of vocational rehabilitation services has the right to pursue any or all of the following options as provided in 34 C.F.R. § 361.57:

(a) Informal administrative review meeting with the Chief of VRDS or Chief of DSB;

(b) Mediation, and;

(c) Impartial due process hearing before the D.C. Office of Administrative Hearings.

Title 29, Chapter 1, Section 135.3 will be amended to read:

135.3 A service determination dispute may be resolved at any level within the appeal process. The appeal process is initiated when an applicant or consumer requests an informal administrative review meeting. However, an applicant or consumer is not precluded from beginning his or her appeal by requesting mediation or requesting an impartial due process hearing.

Repeal Title 29, Chapter 1, Section 135.4 in its entirety.

Title 29, Chapter 1, Section 136 will amend its Section Heading to read:

29-136. NOTICE AND RIGHT TO DUE PROCESS REMEDIES

Title 29, Chapter 1, Section 136.1 will be amended to read:

136.1 Pursuant to 34 C.F.R. § 361.57, each applicant or consumer of VRSD or DSB shall be informed in writing, that he or she has the right to the following:

(a) The right to request an informal administrative review meeting, mediation or impartial due process hearing;
(b) The procedures to request an informal administrative review meeting, mediation or impartial due process hearing;
(c) The availability of the Client Assistance Program ("CAP") to assist the applicant or consumer during the informal administrative review meeting, mediation or impartial due process hearing;
(d) The right to request a qualified interpreter, fluent in the primary language (including sign language) of the applicant/consumer or other methods of communication used by an individual due to his or her disability;
(e) The right to request auxiliary aids to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others. "Auxiliary aids" include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, brailed materials, and large print materials.

Title 29, Chapter 1, is amended to add new section 136.2, to read as follows:

136.2 An applicant, consumer or his or her authorized representative shall receive written notification of his or her due process remedies, at the following times:

(a) At the time of application;

(b) Assignment to an order of selection category;

(c) Development of an IPE; or

(d) Upon reduction, suspension, and/or termination (including case closure) of any determination concerning the furnishing or denial of vocational rehabilitation services.

Title 29, Chapter 1, Section 137 will amend its Section Heading to read:

29-137. INFORMAL ADMINISTRATIVE REVIEW MEETING

Title 29, Chapter 1, Section 137.1 will be amended to read:

137.1 An informal administrative review meeting is a non-binding and non-adversarial informal dispute resolution process pursuant to 34 C.F.R. § 361.57 (c). The informal administrative review meeting process provides an applicant or consumer an opportunity to meet with the Chief of VRSD or the Chief of DSB in an effort to expeditiously resolve a complaint he or she may have about any determination concerning the furnishing or denial of vocational rehabilitation services. The informal administrative review meeting may involve fact gathering, interviews and negotiation. The informal administrative review meeting is optional and voluntary, and will not deny or delay an applicant or consumer from pursuing any other due process remedy guaranteed by the Rehabilitation Act of 1973, as amended.

Repeal Title 29, Chapter 1, Section 137.2 in its entirety.

Title 29, Chapter 1, Section 138 will amend its Section Heading to read:

29-138. REQUEST FOR AN INFORMAL ADMINISTRATIVE REVIEW MEETING/ TIMELINESS

Title 29, Chapter 1, Section 138.1 will be amended to read:

138.1 A request for an informal administrative review meeting must be submitted in writing, within ten (10) business days of the determination that affected the provision of vocational rehabilitation services. The time limits in this section may be extended by the Chief, Office of Quality Assurance and Federal Compliance, when good cause is shown by one party or at the request of both parties. This request must be addressed to:

Office of Quality Assurance and Federal Compliance
Attention: Chief
Department on Disability Services, Rehabilitation Services Administration
1125 15th Street, NW, 9th Floor
Washington, D.C. 20005
(202) 442-8670 (Voice or Relay)

Title 29, Chapter 1, Section 138.2 will be amended to read:

138.2 Within five (5) business days after the request is received, the Chief of the Office of Quality Assurance and Federal Compliance ("OQAFC") will do the following:

(a) Forward the request to the Chief of the VRSD or Chief of the DSB; and

(b) Send a written notification to the applicant/client stating the date, time and location of the informal administrative review meeting. Notification shall be in an Americans with Disabilities Act (ADA) compliant format, including: (1) in the medium of the applicant or consumer's choice, including large print, Braille, tape, disk; and (2) provided via e-mail and/or U.S. Priority Mail with Delivery Confirmation requested.

Title 29, Chapter 1, Section 138.3 will be amended to read:

138.3 (a) Within five (5) business days of receiving the request from the Chief of OQAFC, the Chief of VRSD or Chief of DSB will personally meet with the applicant, consumer and his or her authorized representative, unless such meeting is inconvenient for both parties and both parties record this inconvenience in writing. If both parties are unable to meet in person, they will participate in a telephonic conference not later than five (5) business days after receipt of the request from the Chief of OQAFC.

(b) The Chief of VRSD or Chief of DSB will report the outcome of the informal administrative review to the Chief of OQAFC, no later than five (5) business days following the conclusion of the meeting.

Title 29, Chapter 1, is amended to add new section 138.4 to read as follows:

138.4 (a) If the applicant, consumer, or his or her authorized representative and the VRSD/DSB Chief successfully resolve the issue(s) addressed during the informal administrative review meeting, the Chief of OQAFC will place a written note in the applicant or consumer's file noting the vocational rehabilitation counselor will implement the agreed upon resolution within ten (10) business days, absent any unforeseen circumstances outside of the counselor's immediate control;

(b) If the applicant, consumer, or his or her authorized representative and the VRSD/DSB Chief are unable to resolve the issue(s) addressed during the informal administrative review meeting, the Chief of OQAFC shall notify the applicant or consumer in writing of his/her right to request mediation and/or an impartial due process hearing, in accordance with 34 CFR § 361.57, within five (5) business days of receiving notification of the outcome from the Chief of VRSD or Chief of DSB; and

(c) Notification shall be in an Americans with Disabilities Act (ADA) compliant format, including: (1) in the medium of the applicant or consumer's choice, including large print, Braille, tape, disk; and (2) provided via e-mail and/or U.S. Priority Mail with Delivery Confirmation requested.

Title 29, Chapter 1, Section 139 will amend its Section Heading to read:

29-139. MEDIATION PROCESS

Title 29, Chapter 1, Section 139.1 will be amended to read:

139.1 The Administration provides applicants/clients the voluntary option to request mediation, a formal dispute resolution process mandated by 34 C.F.R. § 361.57. Mediation is available whenever there is a dispute about services. Mediation is facilitated by an impartial qualified mediator and relies upon the good faith efforts of all interested parties to communicate in a productive manner to reach a collaborative agreement as to how the dispute should be resolved.

Title 29, Chapter 1, is amended to add new section 139.2 to read as follows:

139.2 Mediation does not involve findings of facts or the weighing of evidence, similar to a formal, impartial due process hearing. Mediation is a voluntary process and does not affect the applicant's/client's right to request an impartial due process hearing. In the event mediation is concluded without a resolution, detailed in a written mediation agreement, either party may pursue resolution through an impartial due process hearing.

Title 29, Chapter 1, Section 140 will amend its Section Heading to read:

29-140. RIGHT TO MEDIATION

Title 29, Chapter 1, Section 140.1 will be amended to read:

140.1 Pursuant to the Rehabilitation Act of 1973, as amended, an applicant or consumer who is dissatisfied with any determination concerning the furnishing or denial of vocational rehabilitation services has the right to pursue mediation prior to pursuing an impartial due process hearing.

Title 29, Chapter 1, is amended to add new section 140.2 to read as follows:

140.2 Mediation is voluntary for both parties and therefore, at any time during the mediation process, either party or the mediator may elect to terminate the mediation.

Title 29, Chapter 1, Section 141 will amend its Section Heading to read:

29-141. REQUEST FOR MEDIATION/TIMELINESS/SCHEDULING

Title 29, Chapter 1, Section 141.1 will be amended to read:

141.1 A request for mediation must be submitted in writing in a timely manner so the mediation process is conducted within a 60-day time period, and does not delay completion of an impartial due process hearing. This request must be addressed to:

Office of Quality Assurance and Federal Compliance
Attention: Chief
Department on Disability Services, Rehabilitation Services Administration
1125 15th Street, NW, 9th Floor
Washington, D.C. 20005
(202) 442-8670 (Voice or Relay)

Title 29, Chapter 1, is amended to add new section 141.2 to read as follows:

141.2 Notification of the scheduling and location of the mediation shall be made in writing and/or in the consumer's preferred format in accordance with the Americans with Disabilities Act (Act).

Title 29, Chapter 1, is amended to add new section 141.3 to read as follows:

141.3 The time limits in this section may be extended by the Chief, Office of Quality Assurance and Federal Compliance, when good cause is shown by one party or at the request of both parties.

Repeal Title 29, Chapter 1, Sections 142 through 144 in their entirety.

Reserve Title 29, Chapter 1, Sections 142 through 144.

29-199. DEFINITIONS.

Title 29, Chapter 1, Section 199 will amend the definition of "Applicant" to read:

Applicant – an individual who submits an application for vocational rehabilitation services in accordance with 34 C.F.R. § 361.41 (b) (2).

Title 29, Chapter 1, Section 199 will amend the definition "Client Services Division" and replace it with "Vocational Rehabilitation Services Division."

Title 29, Chapter 1, Section 199 will amend the definition of "Vocational Rehabilitation Services Division" to read:

Vocational Rehabilitation Services Division – a division within the Department on Disability Services, Rehabilitation Services Administration, which includes vocational rehabilitation services, supported employment, and independent living.
.

Title 29, Chapter, 1, Section 199 is amended to add the following definitions:

Administration or Rehabilitation Services Administration (DDS/RSA) – the District of Columbia Department on Disability Services, Rehabilitation Services Administration.

Auxiliary aids and services includes—

(1) Qualified interpreters, note takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, brailed materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Client or Consumer – an individual who has submitted an application pursuant to 34 C.F.R. § 361.41 (b) (2), and who has satisfied the eligibility requirements under 34 C.F.R. § 361.42 (a) (1), (a) (3) or 34 C.F.R. § 361.42 (b).

Division of Services for the Blind - a division within the Department on Disability Services, Rehabilitation Services Administration, which provides vocational rehabilitation and entrepreneurial services to blind and sight-impaired individuals.

Due Process Remedies – the collective name for the rights/procedures outlined in Chapter 1 of this Title.

Informal administrative review meeting is an optional first step informal nonbinding, non-adversarial process that the Department on Disability Services/Rehabilitation Services Administration offers to individuals to resolve disputes about any determination concerning the furnishing or denial of

vocational rehabilitation services. The applicant/client meets with the Chief of VRSD or Chief of DSB to attempt resolution through interviews, negotiation, and document review.

Title 29, Chapter 1, Section 199 will amend the definition of "Washington D.C. Metropolitan Area" to read:

Washington D.C. Metropolitan Area – for purposes of receiving services under this Chapter, the Washington D.C. Metropolitan Area is defined as areas in the District of Columbia, Maryland and Virginia accessible by public transportation By definition this includes the principal cities of: Washington, DC; Arlington, VA; Alexandria, VA; Reston, VA; Bethesda, MD; Frederick, MD; Rockville, MD; Gaithersburg, MD, Largo, MD

Title 29, Chapter 2 of the DCMR is amended to read as follows:

All references to "DHS" shall be replaced by "DDS."

Title 29, Chapter 2, Section 218 will amend its Section Heading to read:

29-218. DUE PROCESS SCOPE AND PROCEDURES FOR BLIND VENDORS AND RSVFP TRAINEES RECEIVING VOCATIONAL REHABILITATION SERVICES

Title 29, Chapter 2, Section 218.1 will be amended to read:

218.1 The purpose of these regulations is to establish procedures pursuant to the Rehabilitation Act of 1973, as amended, and 34 C.F.R. § 395.11, which provide vendors and/or RSVFP trainees the opportunity to resolve disagreements with any determination concerning the furnishing or denial of vocational rehabilitation services offered in connection with the Randolph-Sheppard Vending Facility Program (RSVFP).

Title 29, Chapter 2, Section 218.2 will be amended to read:

218.2 (a) A Vendor or RSVFP trainee who is dissatisfied with any determination concerning the furnishing or denial of vocational rehabilitation services or training, provided under the Rehabilitation Act of 1973 and/or 34 C.F.R. § 395.11, has the right to pursue any or all of the following options provided in 34 C.F.R. § 361.57:

(1) Informal administrative review meeting with the Chief of the Division of Services for the Blind (DSB);

(2) Mediation, and;

(3) Impartial due process hearing before the D.C. Office of Administrative Hearings.

.

Title 29, Chapter 2, Section 218.3 will be amended to read:

218.3 A service determination dispute regarding vocational rehabilitation services may be resolved at any level within the appeals process. The appeal process is initiated when a vendor or RSVFP trainee requests an informal administrative review meeting. However, a vendor or RSVFP trainee is not precluded from beginning his or her appeal by requesting mediation or requesting an impartial due process hearing, as a means to resolve a determination that affects the provision of vocational rehabilitation services.

Title 29, Chapter 2, Section 219 will amend its Section Heading to read:

29-219. NOTICE AND RIGHT TO DUE PROCESS REMEDIES FOR BLIND VENDORS AND RSVFP TRAINEES RECEIVING VOCATIONAL REHABILITATION SERVICES

Title 29, Chapter 2, Section 219.1 will be amended to read:

219.1 Pursuant to 34 C.F.R. § 361.57, each Vendor or RSVFP trainee shall be informed in writing, that he or she has the right to the following:

(a) The right to request an informal administrative review meeting, mediation or impartial due process hearing;
(b) The procedures to request an informal administrative review meeting, mediation or impartial due process hearing;
(c) The availability of the Client Assistance Program (“CAP”) to assist the applicant or consumer during the informal administrative review meeting, mediation or impartial due process hearing;
(d) The right to request a qualified interpreter, fluent in the primary language (including sign language) of the applicant/consumer or other methods of communication used by an individual due to his or her disability;
(e) The right to request auxiliary aids to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others. "Auxiliary aids" include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, brailed materials, and large print materials.

Title 29, Chapter 2, is amended to add new section 219.2, to read as follows:

219.2 A Vendor, RSVFP trainee, or his or her authorized representative shall receive written notification of his or her due process remedies, at the following times as applicable:

(a) At the time of application;

(b) Assignment to an order of selection category;

(c) Development of an IPE;

(d) Upon reduction, suspension, and/or termination (including case closure) of any determination concerning the furnishing or denial of vocational rehabilitation services; or

(e) At the time of licensure.

Title 29, Chapter 2, Section 220 will amend its Section Heading to read:

29-220. INFORMAL ADMINISTRATIVE REVIEW MEETING

Title 29, Chapter 2, Section 220.1 will be amended to read:

220.1 An informal administrative review meeting is a non-binding and non-adversarial informal dispute resolution process pursuant to 34 C.F.R. § 361.57 (c). The informal administrative review meeting process provides a Vendor or RSVFP trainee an opportunity to meet with the Chief of DSB in an effort to expeditiously resolve a complaint he or she may have about any determination concerning the furnishing or denial of vocational rehabilitation services. The informal administrative review meeting may involve fact gathering, interviews and negotiation. The informal administrative review meeting is optional and voluntary, and will not deny or delay a Vendor or RSVFP trainee from pursuing an impartial due process hearing, guaranteed by 34 C.F.R. § 361.57.

Repeal Title 29, Chapter 2, Section 220.2 and 220.3 in their entirety.

Title 29, Chapter 2, Section 221 will amend its Section Heading to read:

29-221. REQUEST FOR INFORMAL ADMINISTRATIVE REVIEW MEETING/NOTICE TIMELINESS

Title 29, Chapter 2, Section 221.1 will be amended to read:

221.1 A request for an informal administrative review meeting must be submitted in writing, within ten (10) business days, of the determination that affected the

provision of vocational rehabilitation services. The time limits in this section may be extended by the Chief, Office of Quality Assurance and Federal Compliance, when good cause is shown by one party or at the request of both parties. This request must be addressed to:

Office of Quality Assurance and Federal Compliance
Attention: Chief
Department on Disability Services, Rehabilitation Services Administration
1125 15th Street, NW, 9th Floor
Washington, D.C. 20005
(202) 442-8670 (Voice or Relay)

Title 29, Chapter 2, Section 221.2 will be amended to read:

221.2 Within five (5) business days after the request is received, the Chief of the Office of Quality Assurance and Federal Compliance ("OQAFC") will do the following:

(a) Forward the request to the Chief of the DSB; and

(b) Send a written notification to the Vendor/RSVFP trainee stating the date, time and location of the informal administrative review meeting. Notification shall be in an Americans with Disabilities Act (ADA) compliant format, including: (1) in the medium of the applicant or consumer's choice, including large print, Braille, tape, disk; and (2) provided via e-mail and/or U.S. Priority Mail with Delivery Confirmation requested.

Repeal Title 29, Chapter 2, Section 221.3 in its entirety.

Title 29, Chapter 2, Section 222 will amend its Section Heading to read:

29-222 INFORMAL ADMINISTRATIVE REVIEW MEETING PROCESS

Title 29, Chapter 2, Section 222.1 will be amended to read:

222.1 (a) Within five (5) business days of receiving the request from the Chief of OQAFC, the Chief of DSB will personally meet with the vendor, RSVFP trainee and his or her authorized representative, unless such meeting is inconvenient for both parties and both parties record this inconvenience in writing. If both parties are unable to meet in person, they will participate in a telephonic conference not later than five (5) business days after receipt of the request from the Chief of OQAFC.

(b) The Chief of DSB will report the outcome of the informal administrative review to the Chief of OQAFC, no later than five (5) business days following the conclusion of the meeting.

Title 29, Chapter 2, is amended to add new section 222.2 to read as follows:

222.2 (a) If the Vendor, RSVFP trainee, or his or her authorized representative and the DSB Chief successfully resolve the issue(s) addressed during the informal administrative review meeting, the Chief of OQAFC will place a written note in the vendor or RSVFP trainee's file noting that the vocational rehabilitation counselor will implement the agreed upon resolution within ten (10) business days, absent any unforeseen circumstances outside of the counselor's immediate control;

(b) If the Vendor, RSVFP trainee, or his or her authorized representative and the DSB Chief are unable to resolve the issue(s) addressed during the informal administrative review meeting, the Chief of OQAFC shall notify the vendor/RSVFP trainee in writing of his/her right to request an impartial due process hearing, in accordance with 34 CFR § 361.57, within five (5) business days of receiving notification of the outcome from the Chief of DSB; and

(c) Notification shall be in an Americans with Disabilities Act (ADA) compliant format, including: (1) in the medium of the applicant or consumer's choice, including large print, Braille, tape, disk; and (2) provided via e-mail and/or U.S. Priority Mail with Delivery Confirmation requested.

Title 29, Chapter 2, Section 223 will amend its Section Heading to read:

29-223. MEDIATION PROCESS FOR BLIND VENDORS AND RSVFP TRAINEES RECEIVING VOCATIONAL REHABILITATION SERVICES

Title 29, Chapter 2, Section 223.1 will be amended to read:

223.1 The Administration provides vendors or RSVFP trainees the voluntary option to request mediation, a formal dispute resolution process mandated by 34 C.F.R. § 361.57. Mediation is available whenever there is a dispute about vocational rehabilitation services pursuant to the Rehabilitation Act of 1973, and 34 C.F.R. § 395.11. Mediation is facilitated by an impartial qualified mediator and relies upon the good faith efforts of all interested parties to communicate in a productive manner to reach a collaborative agreement as to how the dispute should be resolved.

Title 29, Chapter 2, is amended to add new section 223.2 to read as follows:

223.2 Mediation does not involve findings of facts or the weighing of evidence, similar to a formal, impartial due process hearing. Mediation is a voluntary process and does not affect the vendor's/RSVFP trainee's right to request an impartial due process hearing. In the event mediation is concluded without a resolution,

detailed in a written mediation agreement, either party may pursue resolution through an impartial due process hearing.

Title 29, Chapter 2, Section 224 will amend its Section Heading to read:

29-224. RIGHT TO MEDIATION

Title 29, Chapter 2, Section 224.1 will be amended to read:

224.1 Pursuant to the Rehabilitation Act of 1973, as amended, a Vendor or RSVFP trainee, who is dissatisfied with any determination concerning the furnishing or denial of vocational rehabilitation services, has the right to pursue mediation prior to pursuing an impartial due process hearing.

Title 29, Chapter 2, is amended to add new section 224.2 to read as follows:

224.2 Mediation is voluntary for both parties and therefore, at any time during the mediation process, either party or the mediator may elect to terminate the mediation.

Title 29, Chapter 2, Section 225 will amend its Section Heading to read:

29-225. REQUEST FOR MEDIATION / TIMELINESS/SCHEDULING

Title 29, Chapter 2, Section 225.1 will be amended to read:

225.1 A request for mediation must be submitted in writing in a timely manner so the mediation process is conducted within a 60-day time period, and does not delay completion of an impartial due process hearing. This request must be addressed to:

Office of Quality Assurance and Federal Compliance
Attention: Chief
Department on Disability Services, Rehabilitation Services Administration
1125 15th Street, NW, 9th Floor
Washington, D.C. 20005
(202) 442-8670 (Voice or Relay)

Title 29, Chapter 2, is amended to add new section 225.2 to read as follows:

225.2 Notification of the scheduling and location of the mediation shall be made in writing and/or in the consumer's preferred format in accordance with the Americans with Disabilities Act (Act).

Title 29, Chapter 2, is amended to add new section 225.3 to read as follows:

225.3 The time limits in this section may be extended by the Chief, Office of Quality Assurance and Federal Compliance, when good cause is shown by one party or at the request of both parties.

Repeal Title 29, Sections 226 through 227 in their entirety.

Reserve Title 29, Sections 226 through 227.

29-299. DEFINITIONS

Title 29, Chapter 2, Section 299 will amend the definition of "Administration" to read:

Administration – the District of Columbia Department on Disability Services, Rehabilitation Services Administration (DDS/RSA). The Rehabilitation Services Administration has been designated as the State Licensing Agency (SLA) for the District of Columbia, responsible for administering the Randolph-Sheppard Vending Facilities Program (RSVFP).

Title 29, Chapter 2, Section 299 will amend the definition of "Department or DHS" to read:

Department – the District of Columbia Department on Disability Services (DDS).

Title 29, Chapter 2, Section 299 will amend the definition of "Director" to read:

Director – the Director of the District of Columbia Department on Disability Services or the Director's designee.

Title 29, Chapter 2, Section 299 will strike the definition of "Hearing Examiner" in its entirety.

Title 29, Chapter 2, Section 299 is amended to add the following definitions:

Auxiliary aids and services includes—

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening devices, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDD's), videotext displays, or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Division of Services for the Blind - a division within the Department on Disability Services, Rehabilitation Services Administration, which provides vocational rehabilitation and entrepreneurial services to blind and sight-impaired individuals.

Due Process Remedies – the collective name for the rights/procedures outlined in Chapter 2 of this Title.

Informal administrative review meeting is an optional first step informal nonbinding, non-adversarial process that the Department on Disability Services/Rehabilitation Services Administration offers to individuals to resolve disputes about any determination concerning the furnishing or denial of vocational rehabilitation services. The vendor or RSVFP trainee meets with the Chief of DSB to attempt resolution through interviews, negotiation, and document review.

Randolph-Sheppard Vending Facilities Program (RSVFP) – the program which licenses blind vendors and provides ongoing support services, in accordance with the Randolph-Sheppard Vending Stand Act and 34 C.F.R. § 395.7.

RSVFP Trainee – an individual who:

- **(a)** is not a licensed vendor pursuant to the Randolph-Sheppard Vending Stand Act; and
- **(b)** is receiving vocational rehabilitation services / training pursuant to the Rehabilitation Act of 1973, and 34 C.F.R. § 395.11;

State Licensing Agency – the State Agency designated by the Secretary, pursuant to 34 C.F.R. § 395 *et seq.*, to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

D.C. OFFICE OF HUMAN RIGHTS

NOTICE OF PROPOSED RULEMAKING

The Director of the Office of Human Rights, pursuant to section 301(c) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c)), hereby gives notice of the intent to amend Chapter 1 (Complaints of Discrimination in the District of Columbia Government) of Title 4 (Human Rights) of the District of Columbia Municipal Regulations (DCMR).

Proposed rulemaking was published in the *D.C. Register* at 55 DCR 5986 on May 23, 2008. No comments were received during the thirty (30) day comment period. A second proposed rulemaking was published in the *D.C. Register* at 55 DCR 12719 on December 19, 2008. After further review, the Director has made a number of substantial alterations with respect to EEO Counselors' responsibilities, EEO Officers' responsibilities, responsibilities for agency heads, and authority of hearing examiners. Minor alterations were also made to clarify the intent, meaning, or application of the proposed rules. These proposed rules supersede those published on December 19, 2008.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Chapter 1 of Title 4 DCMR is deleted in its entirety and amended to read as follows:

CHAPTER 1 COMPLAINTS OF DISCRIMINATION IN THE DISTRICT OF COLUMBIA GOVERNMENT

Secs.

100 SCOPE

100.1 The provisions of this chapter shall apply to all District government agencies subject to the Act.

101 COVERAGE

101.1 The provisions of this chapter shall govern the processing of any complaint involving discrimination on grounds of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, matriculation, political affiliation, genetic information, and disability.

101.2 The procedures set forth in this chapter shall apply to matters presently pending or hereafter filed with a District government agency.

101.3 Nothing in this chapter shall be construed to supersede any federal or District law, nor to invalidate any proceedings commenced under the authority of any prior regulations.

101.4 Sexual harassment shall be deemed to be a form of sex discrimination which is prohibited under District laws and regulations, including this chapter.

101.5 Employees of the District government shall have certain rights to file complaints with the United States Equal Employment Opportunity Commission (EEOC) pursuant to § 706 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, and to pursue remedies provided for in the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 626 and 633.

102 POLICY

102.1 It shall be the policy of the Government of the District of Columbia in connection with any aspect of District government employment to do the following:

(a) To prohibit sexual harassment;

(b) To prohibit retaliation for filing Equal Employment Opportunity (EEO) complaints;

(c) To provide equal employment opportunity for all persons; and

(d) To prohibit discrimination in employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, matriculation, political affiliation, genetic information, and disability.

102.2 Sufficient resources shall be provided to administer the District's EEO program in a positive and effective manner.

102.3 A continuing program shall be conducted to eradicate every form of prejudice or discrimination with respect to any aspect of District government employment based upon race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, matriculation, political affiliation, genetic information, and disability.

102.4 The head of each District government agency subject to the Act shall be required to take affirmative action within that agency to assure equal opportunity in every aspect of employment.

103 RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF HUMAN RIGHTS

103.1 In addition to other duties, for purposes of this chapter, the Director shall advise the Mayor with respect to the preparation of plans, procedures, regulations, reports and other matters pertaining to the provisions of this chapter.

103.2 The Director shall prepare all reports in connection with the EEO program as may be required by the Mayor or the EEOC.

103.3 The Director shall recommend changes in policy, practices, and procedures designed to eliminate discriminatory practices and to improve the Mayor's program for equal employment opportunity.

103.4 The Director shall establish a system for periodically evaluating the effectiveness of the District government's overall EEO program, including the rules, and when appropriate report to the Mayor with recommendations for any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed to carry out the provisions of this chapter.

103.5 The Director shall prepare a model agency affirmative action program.

103.6 The Director shall consult with agency heads regarding the suitability of persons appointed or designated, or pending appointment or designation, as departmental EEO Officers and EEO Counselors. If the Director determines that an EEO Counselor or an EEO Officer has not responded to at least three (3) orders of OHR, the Director shall notify the responsible agency head and recommend that the EEO Counselor or EEO Officer be removed from the EEO role.

103.7 The Director shall issue guidelines and procedures for counseling by an EEO Counselor of any aggrieved employee or applicant for employment who contends that he or she has been discriminated against because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, matriculation, political affiliation, genetic information, and disability, with respect to any aspect of District government employment.

103.8 The Director shall receive and investigate complaints of alleged discrimination in personnel matters, from employees who contend that they have been discriminated against in connection with any aspect of District government employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, matriculation, political affiliation, genetic information, and disability.

103.9 The Director shall publicize to all District government employees the address of the Office of Human Rights (OHR), as well as the names, agency addresses, and phone numbers of all District EEO Counselors and EEO Officers.

103.10 The Director shall submit to the Director of the Department of Human Resources for prior review all recommendations of in-depth investigative or statistical reports when the recommendations or reports relate to or would affect in any manner programs involving the employment, employee relations, or other personnel actions of the District government.

103.11 The Director shall designate, when necessary in the interest of fairness and justice, At-Large EEO Counselors to handle EEO problems on an informal basis. An At-Large EEO Counselor need not be an employee of the agency for which counseling service is provided. The OHR Compliance Officer may also take on this role.

104 RESPONSIBILITIES OF AGENCY HEADS

104.1 Each District agency head shall do the following:

(a) Be personally responsible and accountable for execution of the EEO program within his or her agency;

(b) Establish procedures, consistent with § 103.7, whereby each complaint is

reviewed promptly and processed promptly at every subsequent stage and cause agency records to reflect each date of review and the action taken;

(c) Appoint or designate one (1) or more EEO Officers and EEO Counselors;

(d) Upon request of the Director, consult with him or her regarding the suitability of persons appointed or designated EEO Officers and EEO Counselors and, upon request, review appointments or designations and advise the Director of the determination. Consultation between agency heads and the Director prior to the appointment or designation of EEO Counselors and EEO Officers is encouraged;

(e) The consultation between the Director and agency head shall also include monitoring the EEO Counselors and the EEO Officers to determine whether or not they are executing their responsibilities, including but not limited to:

(1) Providing the Exit Letter described in § 105.5 to the complainant within 30 days of complainant's filing date, or within 60 days if both parties determine that the investigation will continue;

(2) Providing a Position Statement or responding to a request for documents in the time allotted by the investigator;

(3) Responding to an Order of OHR within the time allotted by the investigator; and

(4) Informing all employees of their rights and responsibilities under the Act.

(f) Publicize to agency employees by posting on agency bulletin boards, the following:

(1) The name, office address, and telephone number of each agency EEO Counselor and the organizational units served;

(2) Inform employees that they may contact an EEO Counselor outside their organizational unit if desired; and the time limit for contacting an EEO Counselor;

(3) The availability of the EEO Counselor to counsel an employee or qualified applicant for employment who believes he or she has been discriminated against because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, matriculation, political affiliation, genetic information, and disability in connection with respect to any aspect of District government employment; and

(g) Inform employees and applicants of the requirement of consulting with an EEO Counselor within one hundred eighty (180) days of an alleged unlawful employment practice.

104.2 Each District government agency head shall also publicize to all agency employees, and post permanently on official bulletin boards, the name, address, and telephone number of the Office of Human Rights, each agency EEO Officer, and the agency EEO Counselors.

104.3 Each District government agency head shall make reasonable accommodation for the religious needs of applicants and employees, including the needs of those who observe the Sabbath on a day other than Sunday, when that accommodation can be made without undue disruption to the business of the agency.

105 PRE-COMPLAINT PROCESSING

105.1 An employee or applicant who believes that he or she has been discriminated against because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, matriculation, political affiliation, genetic information, and disability in connection with any aspect of District government employment shall consult an EEO counselor within one hundred-eighty (180) days of the occurrence of the alleged unlawful discriminatory practice, except that a complaint of sexual harassment may be filed directly with OHR.

105.2 After being consulted by a complainant, the EEO Counselor shall do and document the following:

(a) Make a thorough review of the circumstances underlying the complaint, including the treatment of members of the complainant's group, if any, identified by the complaint, as compared with the treatment of other employees in, or applicants to, the organizational unit in which the alleged discrimination occurred;

(b) Examine all pertinent records;

(c) Review any policies and practices related to the work situation or application process which may constitute, or appear to constitute, discrimination, even though they have not been expressly cited by the complainant; and

(d) Discuss with the complainant all the pertinent employees who need to be interviewed, including supervisors.

105.3 The EEO Counselor shall also do the following:

(a) Advise the applicant or employee of the right to representation of his or her own

choosing or through a Collective Bargaining Agreement;

(b) Counsel the complainant or his or her representative concerning the issues of the matter;

(c) Seek a solution of the matter on an informal basis; and

(d) Keep a record of counseling activities so as to brief the agency or EEO Officer at least once a month of those activities.

105.4 The EEO Counselor shall, insofar as is practicable, conduct the final interview with the complainant and/or his or her representative not later than thirty (30) days after first being consulted by the complainant.

105.5 During the final interview, the EEO Counselor shall provide to the complainant and/or his or her representative written notice, the Exit Letter, of the complainant's right to file a formal complaint with the Director within fifteen (15) days of the final interview, if the matter has not been resolved to complainant's satisfaction.

105.6 A formal complaint to the Director shall be filed by the complainant within fifteen (15) days after the final interview has been conducted by the EEO Counselor.

105.7 Formal complaints filed after the fifteen (15) day period specified in § 105.6 shall be deemed untimely and dismissed as such by the Director.

105.8 If additional time is need to conduct the final interview under § 105.4, the EEO Counselor may extend the thirty (30) day time period established by § 105.4 for an additional thirty (30) days (the "extension period"). During the extension period, the complainant may demand an Exit Letter at any time, and the EEO Counselor shall provide an Exit Letter upon such a demand. In addition, during the extension period, the complainant may file a formal complaint with the Director ,notwithstanding whether the Exit Letter has been demanded or issued.

105.9 If there is an extension period, a formal complaint to the Director shall be filed by the complainant during the extension period or within fifteen (15) days after a final interview is conducted, whichever is earlier. Formal complaints filed beyond this time period shall be deemed untimely and dismissed as such by the Director.

105.10 Although the EEO Counselor should attempt to offer consultation on a confidential basis, he or she may disclose to the OHR Director and to the head of the cited agency circumstances surrounding the complaint which include, but are not limited to, safety, criminal actions, or patterns or practices of discriminatory or harassing conduct by the agency or any of its cited employees or managers.

105.11 The EEO Counselor shall be free from restraint, interference, coercion, discrimination, or reprisal and shall be given the assistance and cooperation of the agency in connection

with the performance of his or her duties under this chapter.

105.12 The EEO Officer shall have the following responsibilities:

(a) Serve as the chief EEO coordinator within the agency;

(b) Manages the EEO program within the agency;

(c) Develop, implement, monitor, and evaluate the agency's affirmative action plan;

(d) Advise the agency head and supervisors on EEO matters;

(e) Prepare the quarterly reports, agency EEO-4 reports, and other reports required by OHR;

(f) Assist in the development and coordination of career development and upward mobility programs;

(g) Assist the EEO Counselors in training employees about their rights and ensuring compliance with EEO policies and procedures;

(h) Act as agency liaison with the community and advocacy organizations in matters relating to recruitment, employment, affirmative action, and equal employment;

(i) Ensure that agency announcements, EEO policies and procedures, and the names of agency EEO Counselors are distributed and posted;

(j) Serve as chairperson of an agency EEO Committee, if any;

(k) Provide technical assistance to, and coordinate with, EEO Counselors;

(l) Notify OHR of any and all changes in agency EEO personnel within ten (10) business days after the change; and

(m) Conduct a formal investigation related to an EEO complaint, if appointed to do so, and provide the Position Statement or other records, if the agency so designates.

105.13 At any stage in the proceeding under this chapter, the complainant shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have the right to be accompanied, represented, and advised by a representative of his or her own choosing or through a Collective Bargaining Agreement.

105.14 If the complainant is an employee of the District government, he or she shall have a reasonable amount of official time for preparation and presentation of his or her complaint.

105.15 If the complainant designates an employee of the District government as his or her representative, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have a reasonable amount of official time to prepare and present the matter.

105.16 The Director may request that an adverse action be held in abeyance, unless he or she determines that it is shown that immediate and irrevocable harm to the agency will result or there will be a substantial interference with the efficient operation of the agency.

106 FILING AND PRESENTATION OF COMPLAINTS

106.1 A verified and written complaint of discrimination shall be submitted by the complainant to the Director within fifteen (15) days of the date of the complainant's final interview with the EEO Counselor.

106.2 The time limit for filing may be extended by the Director for good cause shown.

106.3 Upon filing of a complaint, the Director shall provide a copy to the agency representative of the agency in which the complainant is employed or, in the case of an applicant, to which the complainant applied.

106.4 The Director may dismiss or reject a complaint of discrimination for the following reasons:

(a) The complaint is not timely filed;

(b) The complainant does not state a claim for which relief can be granted under the Act;

(c) The allegations of the complaint fall outside the scope of this chapter;

(d) OHR does not have jurisdiction over the complainant or the respondent;

(e) The complainant fails to prosecute or respond to inquiries from the investigator or mediator regarding the complaint within a prescribed time limit;

(f) The complaint is subject to dismissal pursuant to § 107 of this chapter.

106.5 In the event of a rejection or dismissal of a complaint, the Director shall transmit the decision by letter to the complainant or his or her representative. The letter shall contain notice of the complainant's right to request reconsideration or the reopening of the case by the Director pursuant to § 114.4.

106.6 In order to resolve each complaint expeditiously, the complainant and the District government shall proceed with the complaint without undue delay so that the complaint

is resolved, insofar as practicable, within two hundred ten (210) days after its receipt by the Director.

106.7 The complainant shall be responsible for prosecuting the complaint without undue delay so as to permit resolution of the complaint within the prescribed time limits.

106.8 The complainant shall provide reasonable assistance and all pertinent information to OHR staff in processing the complaint.

106.9 The Director may dismiss a complaint pursuant to § 106.4(d) or, in his or her discretion, adjudicate the complaint on the basis of the existing record, if sufficient information for that purpose is available.

106.10 If OHR determines that a complainant is filing what are determined to be frivolous complaints, which may include filing an unreasonable number of complaints during a given time period, it may resolve the complaint in accordance with OHR Intake Guidelines which may include an expedited review of the allegations, review of the previous complaints against the respondent by this complainant, and other investigative techniques to determine the legitimacy of the complaint.

106.11 Officers and employees of District government agencies in which a complaint arises under this chapter shall not cause hardship, delay, or interference with the efforts of the EEO Counselor, the complainant or the complainant's representative, OHR staff members, or the Hearing Examiner, in their efforts and activities to process the complaint to a resolution.

106.12 All District agencies shall make every effort to make available as witnesses those employees whose testimony is determined to be necessary by the investigator or Hearing Examiner.

106.13 A complaint may be amended by the complainant at any time prior to the issuance of a Letter of Determination (LOD); provided, that if the investigation is completed and it is being reviewed for legal sufficiency, OHR may direct that the Complainant file a new Charge of Discrimination.

106.14 An amendment shall be in writing and verified, and shall be submitted by the complainant or the complainant's representative to the Director.

106.15 When an amendment is filed, the Director shall serve a copy of the amendment upon the respondent within five (5) work days of the amendment.

106.16 The respondent shall, within five (5) work days after service of the amendment, file an answer to the amendment.

107 ADMINISTRATIVE DISMISSALS

107.1 A case shall be terminated without prejudice if the complainant submits a written request to withdraw the complaint, or for the following administrative reasons:

(a) The OHR cannot reach the complainant by postal mail, electronic mail, or telephone, using the contact information of record, and the complainant has not contacted OHR. OHR may conclude that the complainant cannot be reached and fails to proceed with the complaint by postal mail if OHR has mailed at least one (1) regularly mailed letter to the complainant and has not received a response from the complainant within thirty (30) days. OHR may conclude that a complainant cannot be reached by electronic mail if OHR has sent at least one (1) electronic mail to the complainant and has not received a response from the complainant within thirty (30) days. OHR may conclude that a complainant cannot be reached by telephone if: (i) OHR has left at least one (1) answering machine or voicemail message at the complainant's telephone number and has not received a response from the complainant within thirty (30) days; or (ii) OHR has telephoned the complainant at least two (2) times, allowed the phone to ring at least seven (7) times, no person has answered the telephone, and no answering machine or voicemail system was activated.–OHR shall only be required to attempt to contact the complainant by one (1) of these methods before administratively dismissing the complaint under this paragraph.

(b) The complainant fails to state a claim for which relief can be granted under the Act;

(c) The respondent no longer exists as a result of a court action (e.g., bankruptcy or dissolution); or

(d) After investigation, the Director determines that OHR lacks jurisdiction over the respondent.

107.2 An order dismissing a complaint for an administrative reason shall be in writing, shall be served on the parties, and shall state the reasons for the dismissal.

107.3 The Director, after receiving a request to reopen a complaint, may reopen the complaint for good reasons or in the interest of justice, if no determination has previously been made on the merits of the complaint. The decision whether to reopen the complaint shall be within the discretion of the Director.

107.4 The decision of the Director to reopen or deny reopening of a complaint shall be served on all parties.

108 WITHDRAWAL OF COMPLAINTS

108.1 A complaint filed with OHR under the provisions of the Act may be voluntarily

withdrawn at the request of the complainant at any time prior to the completion of the Office's investigation and findings, as specified in section 305 of the Act (D.C. Official Code § 2-1403.05).

108.2 The circumstances of a voluntary withdrawal may be fully investigated by OHR.

108.3 A complainant may request that the Director reopen a complaint that the complainant previously withdrew voluntarily if the complainant submits a written request within thirty (30) days after the voluntary withdrawal. The request shall state specifically the reasons why the complaint should be reopened.

108.4 The Director, after receiving a request to reopen a complaint, may reopen the complaint for good reasons or in the interest of justice, if no determination has previously been made on the merits of the complaint. The decision whether to reopen the complaint shall be within the discretion of the Director.

109 MEDIATION

109.1 After a complaint has been properly filed, the complainant and respondent shall attend a mandatory mediation session that shall be held on a mutually agreed upon date or a date specified by the Director.

109.2 A mediator shall be appointed by the Director from a list of individuals qualified in alternative dispute resolution.

109.3 Prior to beginning the mediation session, the mediator shall require both parties and their representatives to sign an agreement that all aspects of the mediation shall be kept confidential. OHR shall maintain exclusive control over the agreement and all other documents directly related to the mediation.

109.4 No aspect of the mediation shall become a part of the investigative record, and the mediator shall not be called as a witness in any later proceeding between the parties.

109.5 During the mediation, the parties shall discuss the issues in the complaint in an effort to reach an agreement that satisfies the interests of all parties.

109.6 The parties shall have forty-five (45) days after the date of the initial mediation session within which to reach an agreement. If an agreement is reached, the terms and conditions of the agreement shall control resolution of the complaint.

109.7 If an agreement is reached by the parties, the case shall be administratively dismissed by OHR with prejudice**.**

109.8 If an agreement is not reached within the forty-five (45) day period, OHR shall initiate an investigation of the complaint, unless the parties request an extension of the mediation period.

109.9 OHR may initiate an investigation before the conclusion of the mediation proceedings. If the parties are finalizing a settlement agreement, the respondent may request an extension of time in which to file an answer.

110 INVESTIGATION

110.1 Each complaint shall be promptly investigated by OHR.

110.2 The investigator assigned to a case is authorized to administer oaths and require that the statement of a witness shall be under oath or affirmation, without a pledge of confidence.

110.3 A witness shall not be subjected to any form of restraint, interference, coercion, discrimination, or reprisal because of consultation with or information provided to the OHR staff.

110.4 Pursuant to a Freedom of Information Act (FOIA) request, the Director or his designee shall arrange to furnish the complainant, the complainant's representative, the appropriate agency EEO Officer, or the agency head a copy of the investigative file at the end of the reconsideration period.

110.5 The investigator, upon completion of the investigation, shall submit to the Director, through its Office of General Counsel (OGC), a written statement of proposed findings of fact, conclusions, and recommendations.

110.6 OGC shall send a draft Letter of Determination (LOD) recommending probable cause or no probable cause to the Director. The Director shall review the LOD, make a substitute determination or approve the determination, and issue a final determination to the parties. The LOD shall state whether there is probable cause or no probable cause to credit the complaint, or whether the complaint should be dismissed.

110.7 The activities of the Director under this chapter shall be considered investigations or examinations of municipal matters within the meaning of D.C. Official Code § 1-301.21 (2001) and D.C. Official Code § 5-1021 (2001), and the Director and hearing examiners shall possess the powers vested in the Mayor by those statutes.

111 PROBABLE CAUSE DETERMINATION

111.1 A finding of probable cause shall be based upon credible, probative, and substantial evidence which demonstrates a nexus between the harm complained of and the protected characteristic or activity of the complainant.

111.2 If the Director determines there is probable cause to credit the complaint, the LOD shall be served on all parties, advising them of the opportunity to conciliate.

111.3 If probable cause is found, the respondent shall have fifteen (15) calendar days to file for reconsideration based on misapplication of law, material misstatement of fact, or discovery of evidence not available during the investigation.

112 DISMISSAL FOR LACK OF PROBABLE CAUSE

112.1 If, after the investigation and recommendation by OGC, the Director determines that there is no probable cause to credit the complaint, the Director shall issue an order dismissing the complaint.

112.2 The Director shall serve a copy of an order dismissing the complaint for lack of probable cause on all parties and shall advise the complainant of the right to apply to the Director for reconsideration of the dismissal.

113 RECONSIDERATION

113.1 A complainant seeking reconsideration of a dismissal under § 110.2, or a respondent seeking reconsideration under § 716.3, shall submit an application for reconsideration to the Director in writing, stating specifically the grounds upon which the request for reconsideration is based. The grounds shall be limited to misapplication of law, material misstatement of fact, or discovery of evidence not available during the investigation.

113.2 If the request is not based on one of the grounds cited in § 720.1, or is not timely filed, the Director shall reject the application for reconsideration. A request for reconsideration shall be filed with the Director's office, in writing, within fifteen (15) calendar days from the receipt of the Director's LOD.

113.3 Upon receipt of an application for reconsideration, the Director shall send letters acknowledging receipt of the application to both the complainant and the respondent. The respondent shall also receive a copy of the grounds upon which the complainant bases the request for reconsideration, and shall be given ten (10) calendar days from receipt of the information to file a response.

113.4 If, after review of a timely-filed application for reconsideration and the response thereto, the Director concludes that the complainant has not presented evidence that would warrant change, modification, or reversal of the prior dismissal, the Director shall affirm the original no probable cause finding.

113.5 If the Director concludes that the complainant has provided sufficient evidence to raise a genuine issue of law or fact, the complaint shall be reopened for further investigation.

113.6 If the respondent adequately refutes the allegations presented in the application for reconsideration, the prior dismissal shall be affirmed and the parties notified.

113.7 Where the complainant raises issues of material misstatement of fact or discovery of

evidence not available during the investigation, and if the respondent fails to respond within the required time period or fails adequately to refute the allegations in the application for reconsideration, the Director shall reopen the complaint for further investigation.

113.8 If, at the end of further investigation and after considering the record as a whole, the Director concludes that the complainant has not presented sufficient evidence to warrant a change of the prior dismissal, the prior dismissal shall be affirmed, and the parties notified in writing.

113.9 If the Director determines, after further investigation, that a prior dismissal should be reversed, the Director shall find probable cause to credit the complaint, and the parties shall be served with a detailed written basis for the reversal and afforded an opportunity to conciliate.

114 CONCILIATION

114.1 An LOD incorporating the probable cause decision and the basis for the finding shall be served on the complainant, his or her representative, and the respondent agency, including agency head, along with a notice inviting the parties to conciliate.

114.2 The respondent agency shall, within fifteen (15) days of receipt of the LOD, notify the Director in writing of its decision to enter into conciliation.

114.3 If the respondent agency accepts the invitation to conciliate and the complainant agrees, the Director or his or her designee shall set a date for a post-determination conciliation conference to be held within thirty (30) days of the receipt of the agency's acceptance.

114.4 If the parties cannot agree to a settlement, or if the agency fails to respond within the fifteen (15) days prescribed in § 108.6, or declines the invitation to conciliate, the Director or his or her designee shall notify the complainant in writing of the opportunity for a hearing or the right of the complainant to a summary determination as provided in § 110.

114.5 The complainant shall have fifteen (15) days from the receipt of the notice prescribed in § 108.8 to notify the Director in writing of his or her request for a hearing before an independent hearing examiner or for a summary determination.

115 SUMMARY DETERMINATIONS

115.1 After the probable cause determination and failure of the conciliation efforts, the Director may make a summary determination on the merits of a complaint based solely upon information in the complaint file.

115.2 A summary determination is a second review and consideration of the facts to determine if the probable cause determination is appropriate. The summary determination does not

review any of the no probable cause findings. It may result in an affirmation or reversal of the original probable cause decision.

115.3 The Director may designate an independent reviewer to analyze the facts and make a recommendation as to whether probable cause exists to believe that discrimination has occurred.

115.4 In making a summary determination, the Director may issue an order to the agency head requiring appropriate remedial action, including, but not limited to, hiring, reinstatement, promotion, rescission of adverse action, or award of compensatory credits which are authorized by existing personnel regulations and statutes.

115.5 The Director may issue an order dismissing the complaint for lack of probable cause to credit the allegations.

115.6 Any order issued by the Director shall be in writing and shall advise the complainant and the agency head of their right to request reconsideration or the reopening of the case by the Director pursuant to § 114.

115.7 Within fifteen (15) days after issuance of any order by the Director, either party may request reconsideration or the reopening of the case pursuant to § 114.4.

115.8 If the Director determines that a matter is not appropriate for summary determination, the complainant shall be advised of the right to a formal hearing before an independent hearing examiner, with a subsequent decision by the Director based upon the Hearing Examiner's report and recommendations.

115.9 The Director may decide that a summary determination, rather than a hearing, is the appropriate action for any complaint. If the Director issues a summary determination order, the parties may request a reconsideration of the order within ten (10) days after the date of the Director's order. After the ten (10) day period, the parties shall be deemed to have waived the opportunity for reconsideration and no objection to a summary determination shall be considered by the Director except for good cause.

115.10 The complainant shall have fifteen (15) days from receipt of the notice to notify the Director whether or not he or she wishes to have a hearing.

115.11 If the complainant fails to respond to the hearing request within fifteen (15) days in accordance with § 109.9, the Director may make a determination on the merits of the complaint, based solely upon information in the complaint file, and may dismiss the complaint or order remedial action.

116 CONDUCT OF HEARINGS BY HEARING EXAMINERS

116.1 The Director or the assigned Hearing Examiner shall notify all necessary parties in writing that a hearing will be held.

116.2 Hearings shall be held by a qualified Hearing Examiner, who shall not be an employee of the agency in which the complaint arose, and who shall not have investigated the complaint or taken or reviewed an action giving rise to the complaint being heard.

116.3 The Director shall select a Hearing Examiner qualified to conduct a hearing on a discrimination complaint either from among impartial employees, including OHR employees, or from outside contractors of the District government.

116.4 In addition to any other power specified in this chapter, a Hearing Examiner shall have the power to do the following:

(a) Hold a hearing on the issue of the probable cause finding;

(b) Hold pre-hearing conferences to narrow the issues of the complaint, provide notice and information of the hearing procedure, and to take other actions deemed necessary to expedite the hearing;

(c) Administer oaths and affirmations;

(d) Examine and cross-examine witnesses;

(e) Request the issuance of subpoenas authorized under this chapter;

(f) Rule upon offers of proof and receive evidence;

(g) Regulate the course and conduct of the hearing, including the following:

(1) Continuing the hearings to a later date or different place by announcement at the hearings or other appropriate notice;

(2) Taking official notice of any material fact;

(3) Ruling upon the admissibility of evidence and testimony;

(4) Determining whether the hearing will be open to the public; and

(5) Taking appropriate measures to assure that there shall be no interference with the orderly conduct of the hearing; and

(h) Prepare and deliver to the Director a Hearing Examiner's report, which shall include a brief and concise statement of the history of the subject matter of the hearing, findings of fact, conclusions of law, analysis, and a recommendation or proposed order.

(i) If either party fails to respond to the Hearing Examiner's requests for

information or hearing, the Hearing Examiner shall request that the Director issue an Order;

(j) If either party fails to respond to the Order of the Director without reasonable excuse, the Director may issue a determination against the non-responsive party.

116.5 The Director shall transmit the complaint file to the Hearing Examiner.

116.6 The Hearing Examiner shall review the complaint file to determine whether further investigation is needed before scheduling the hearing.

116.7 If the Hearing Examiner determines that further investigation is needed, the Hearing Examiner shall either return the complaint file to the Director for further investigation or arrange with the Director for the appearance of witnesses necessary to supply the needed information at the hearing.

116.8 The Hearing Examiner shall schedule the hearing for a convenient time and place.

116.9 The Director shall provide the Hearing Examiner adequate space, appurtenances, and services necessary for the hearing.

117 HEARING PROCEDURES

117.1 The Hearing Examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents.

117.2 The Hearing Examiner shall permit wide latitude in the introduction of evidence, but shall exclude irrelevant and unduly repetitious evidence.

117.3 The Hearing Examiner shall receive only evidence which may have a bearing upon the complaint or upon any other employment policy or practice related to the complaint.

117.4 District government employees shall be required to serve as witnesses at hearings held under the provisions of this chapter. Absence from regular duty to serve as a witness shall be without charge to leave or loss in pay.

117.5 Witnesses may be requested by either party, subject to the approval of the Hearing Examiner of the reasons given by either party as to the need for the witnesses.

117.6 The Hearing Examiner shall request the Director to make available at the hearing as a witness, through subpoena, any District government employee whose appearance is deemed necessary.

117.7 The Hearing Examiner shall request the Director to make available at the hearing any other person, through subpoena, whose appearance the Hearing Examiner deems necessary.

117.8 The denial of a request for the appearance of a person as a witness by the Hearing Examiner shall include the reasons for denial and shall be entered into the record of the hearing.

117.9 Requests for witnesses may be submitted to the Director in writing by either party not later than three (3) working days in advance of the scheduled hearing date.

117.10 Each agency head shall make employees available to serve as witnesses whenever it is administratively possible and practicable to do so.

117.11 Reasons for denial by an agency head of a request for the service of an employee as a witness shall be sent in writing to the Director, along with a copy to the Hearing Examiner for inclusion in the complaint record and the hearing record.

117.12 If the agency head's explanation is deemed inadequate, the Hearing Examiner shall so advise the Director and request the Director to order, through subpoena, the employee to be made available as a witness at the hearing.

117.13 An agency head shall be required to make the employee available when directed by notice from the Director.

117.14 If the agency head's explanation is adequate, the Hearing Examiner shall insert it in the record of the hearing, provide a copy to the requesting party and the agency, and make arrangements to secure testimony from the employee through written interrogatories.

117.15 Witnesses shall not be subjected to restraint, interference, coercion, discrimination, intimidation, or reprisal in connection with their testimony.

118 RECORDS AND TRANSCRIPTS OF HEARINGS

118.1 Each hearing shall be recorded and transcribed verbatim.

118.2 The record shall consist of the complaint file, exhibits, transcripts, and all other documents submitted to and accepted by the Hearing Examiner related to the subject matter of the hearing and made a part of the record.

118.3 The Director shall be responsible for the reproduction of records, at the expense of the respondent agency.

118.4 A copy of the verbatim transcript, along with copies of each document made a part of the record by the Hearing Examiner, shall be furnished to the parties or their representatives, the agency involved, if not a party, the Hearing Examiner, and the Director.

119 FINDINGS AND RECOMMENDATION OF THE HEARING EXAMINER

119.1 Within thirty (30) days after receipt of the transcript or post hearing submissions, whichever is later, the Hearing Examiner shall transmit to the Director the following:

(a) The complaint file;

(b) The record of the hearing;

(c) A report, including a brief and concise statement of the history of the subject matter of the complaint;

(d) Findings of fact;

(e) Conclusions of law; and

(f) Analysis, recommendations, or proposed order.

119.2 A copy of the Hearing Examiner's report shall be transmitted to the parties or their representatives and, if not a party, to the agency involved, including a notice of the date on which the report was transmitted to the Director.

119.3 Any party who is aggrieved by the adoption of the Hearing Examiner's report and proposed recommendation or order, may, within twenty (20) days after receipt of the report, submit to the Director, OHR, a proposed substitute order or findings, along with arguments in support of the proposed substitute.

120 FINAL DECISION OF THE DIRECTOR AFTER THE HEARING

120.1 Following receipt of the Hearing Examiner's recommendations or proposed decision or order, and any argument or proposed substitute order or findings submitted by a party, the Director shall do one of the following:

(a) Render a final decision which may adopt, reject, or modify the decision of the Hearing Examiner; or

(b) Remand the matter for further hearings.

120.2 If the Director rejects or modifies the recommended decision of the Hearing Examiner, the final decision of the Director shall set forth in detail the specific reasons for rejection or modification.

120.3 The final decision of the Director shall be served on the parties or their representatives and, if not a party, the agency involved.

120.4 Either party may file a written request with the Director for reconsideration or to reopen the case within fifteen (15) days from the date of issuance of the final decision.

120.5 A request for reopening will only be considered if the requesting party demonstrates that there is newly discovered evidence that is competent, relevant, and material and was not reasonably discoverable prior to issuance of the final decision by the Director and that such evidence, if credited, would alter the ultimate outcome in the case.

120.6 The final decision of the Director on a complaint for which there has been no hearing shall be transmitted by letter to the parties or their representatives and, if not a party, to the agency involved, stating the basis for the decision, including the findings of fact, analysis, and conclusions of law.

120.7 The letter transmitting the final decision of the Director shall advise the parties of their right to request reconsideration or the reopening of the case pursuant to § 114.4 or to seek judicial review of the decision by a court of competent jurisdiction.

120.8 If either party requests reconsideration or the reopening of the case pursuant to § 114.4, and the Director determines that the case should be reconsidered or reopened, the Director shall inform the parties that the case is being reconsidered or reopened and that the final decision previously issued by the Director is vacated.

120.9 If neither party requests reconsideration or the reopening of the case pursuant to § 114.4, the final decision of the Director shall become the final administrative action of the District government fifteen (15) days after issuance of the decision, and the parties shall be deemed to have exhausted all administrative remedies.

120.10 If the Director decides not to grant a request for reconsideration or to reopen a case, the Director shall so notify the parties in writing, and at the time the notification is issued, the decision previously issued shall become the final administrative action of the District government.

120.11 If no action is taken on a request for reconsideration or to reopen a case within one hundred twenty (120) days, the request shall be deemed disapproved and the decision previously issued shall become the final administrative action of the District government.

120.12 In the interests of justice, the Director may *sua sponte* reopen or reconsider any case in which the Director has issued a decision at any time prior to the filing of an appeal by either party with a court of competent jurisdiction.

120.13 If the Director decides to reconsider or reopen a case pursuant to § 114.12, the Director shall inform the parties that the case is being reconsidered or reopened and that the decision previously issued by the Director is vacated.

121 APPEALS

121.1 An appeal from the final decision of OHR may be taken to the Superior Court of the

District of Columbia.

121.2 Pursuant to § 109 and § 113, the final decisions of the Director include a summary determination or the final determination after the hearing examiner's recommendation.

121.3 The party must file a Petition for Review with the Clerk of the Civil Division within thirty (30) days after service of notice of the final decision.

122 THE COMPLAINT FILE

122.1 The Director shall establish and maintain a complaint file containing all documents pertinent to each complaint.

122.2 The complaint file shall not contain any document that has not been made available to the complainant. The complaint file shall include, as a minimum, copies of the following:

(a) The complaint;

(b) The written report of the EEO Counselor to the agency EEO Officer on all pre-complaint counseling efforts made with regard to the complainant's case;

(c) The investigative file;

(d) A signed written statement of the complainant or the complainant's representative, if the complaint is withdrawn by the complainant;

(e) The written record of adjustment, if the complaint is adjusted informally under the provisions of this chapter;

(f) A copy of the letter from the Director notifying the complainant of the proposed disposition of the complaint and of the right to a hearing, or a decision by the Director without a hearing if no adjustment of the complaint is reached;

(g) A copy of the letter to the complainant transmitting the decision of the Director when the decision is made without a hearing under the provisions of this chapter;

(h) The record of the hearing, including the Hearing Examiner's findings, analysis, and recommended decision on the merits of the complaint if a hearing was held; and

(i) A copy of the letter to the complainant transmitting the decision of the Director if the decision is made after a hearing.

123 COMPLAINTS OF SEXUAL HARASSMENT

123.1 OHR shall receive complaints and allegations involving sexual harassment directed against officers and employees of the District government.

123.2 Allegations of sexual harassment shall be fully investigated, and corrective or disciplinary action taken if warranted.

123.3 Complaining parties shall be required to swear or affirm that the facts stated in the complaint are true to the best of the person's belief, knowledge, and information.

123.4 The complaint file, including all information and documents pertinent to a complaint, shall be confidential.

123.5 Only complaints of sexual harassment that concern incidents which occurred within a period of one (1) year immediately prior to the date the complaint is filed shall be considered.

123.6 An investigation shall be conducted of those complaints which are filed by a present or former employee within one (1) year of the last alleged occurrence.

123.7 Complaints shall be investigated and processed in accordance with the procedures and authorities set forth in this chapter.

123.8 Each agency shall follow the District government's sexual harassment policy, reflected in Mayor's Order 2004-177 (October 20, 2004), and promulgate internal procedures for an employee to follow when filing a complaint with an EEO Counselor.

123.9 Agency heads who have complaints of sexual harassment brought to their attention shall promptly investigate and attempt to resolve the complaints.

123.10 If a resolution cannot be reached within an agency within sixty (60) days, the agency head shall refer the complaint to OHR.

123.11 An employee may file a complaint directly with OHR, even if he or she does not bring an internal complaint to the agency EEO Counselor or an EEO Counselor in another District government agency.

124 FREEDOM FROM REPRISAL OR INTERFERENCE

124.1 Witnesses and those who serve in EEO capacities, such as EEO Officers and EEO Counselors, or those who are involved in any other way in the EEO program or complaint process shall be free from restraint, interference, coercion, discrimination and reprisals at any stage in the presentation of a complaint at either the informal or formal phase or in the performance of their EEO-related duties.

124.2 Anyone coming within the scope of § 118.1 who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this

section or in the performance of his or her EEO related duties, may, if an employee or applicant, have the allegation reviewed as an individual complaint of discrimination subject to applicable sections of this chapter.

124.3 In order to avoid any suggestion of restraint, interference, coercion, discrimination, or reprisal, no information of any kind relating to a complaint of discrimination, or the fact than an employee has made an allegation of discrimination, shall be placed in the employee's personnel records, except any personnel actions taken as a result of final order by the Director which have been upheld on appeal.

125 REMEDIAL ACTION: APPLICANTS FOR EMPLOYMENT

125.1 When the Director finds that an applicant for employment has been discriminated against and, except for that discrimination, would have been hired, the agency involved shall offer the applicant employment of the type and grade denied at the first opportunity that the employment becomes available.

125.2 The agency's offer of employment shall be made in writing.

125.3 The individual shall have fifteen (15) days from receipt of the offer within which to accept or decline the offer.

125.4 Failure to notify the agency of a decision to accept employment within the fifteen (15) day period shall be considered a refusal of the offer, unless the individual can show that circumstances beyond his or her control prevented a timely response.

125.5 If the offer is accepted, the appointment shall be retroactive to the date the applicant would have been hired, and backpay may be awarded for the retroactive period, but not to exceed two (2) years prior to the date the complaint was filed, and subject to any appropriate deductions required by law or regulation. During the period of retroactivity, the complainant shall be deemed to have performed services for all purposes, except for meeting service requirements for completion of a probationary or trial period.

125.6 If the offer is declined, the respondent agency shall award the complainant backpay subject to the limitations of § 119.5 and shall notify the complainant in its offer, of his or her right to this award in the event the offer is declined.

125.7 When the Director finds that discrimination existed at the time the applicant was considered for employment, but does not find that the individual is the one who would have been hired except for discrimination, the agency shall consider the individual for any existing vacancy of the type and grade for which he or she had been considered initially and for which he or she is qualified before consideration is given to other candidates.

125.8 If the individual is not selected, the agency shall record the reasons for non-selection.

125.9 If no vacancy exists, the agency shall give the applicant priority consideration for the next vacancy for which he or she is qualified.

126 REMEDIAL ACTIONS: EMPLOYEES

126.1 When the Director finds that an employee of an agency was discriminated against and as a result of that discrimination was denied an employment benefit, or was subjected to an adverse administrative decision, the agency shall take remedial actions which shall include one (1) or more of the following, but need not be limited to, these actions:

(a) Retroactive promotion, when the record clearly shows that but for the discrimination the employee would have been promoted to a higher grade; provided, that the backpay liability may not accrue from a date more than two (2) years prior to the date the discrimination complaint was filed, or the actual date he or she would have been promoted;

(b) If a finding of discrimination was not based on a complaint, the backpay liability may not accrue from a date earlier than two (2) years prior to the date the finding of discrimination was recorded, or the actual date the employee would have been promoted, whichever is the shorter period;

(c) Consideration for promotion to a position for which the employee is qualified before consideration is given to other candidates, when the record shows that discrimination existed at the time selection for promotion was made, but it is clear that except for the discrimination the employee would have been promoted. If the individual is not selected, the agency shall record the reasons for nonselection;

(d) Cancellation of an unwarranted personnel action and restoration of withheld benefits that would have accrued to the employee;

(e) Expungement from the agency's records of any reference to, or any record of, an unwarranted disciplinary action that is not a personnel action; and

(f) Full opportunity to participate in the employee benefit denied the employee (e.g., training, preferential work assignments, overtime scheduling), or a reasonable substitute.

126.2 Application of the provisions of § 120.1 shall be waived whenever the Director and the agency head concerned agree that sufficient and appropriate opportunities will be available to provide relief to the complainant if his or her complaint is sustained, or whenever the agency head effects the action on a temporary basis and the temporary action is made specifically subject to termination if the complainant's assertion of discrimination is upheld.

126.3 In cases where an appointment has proceeded to a point that a third party might be

aggrieved if no basis is proved for the allegation of discrimination, a temporary appointment or promotion shall be effected.

126.4 When corrective action is ordered by the Director in connection with resolving a complaint, the Director shall transmit a copy of the corrective order to the head of the agency concerned, and the corrective action ordered shall be taken without delay by the agency head.

126.5 If the agency head fails to comply with the corrective order within the stated time frame, the Director shall certify the order to the City Administrator, who shall direct the agency head to comply with the order.

127 THIRD PARTY ALLEGATIONS OF DISCRIMINATION

127.1 This section shall apply to general allegations by organizations or other third parties of discrimination in personnel matters within an agency of the District government which are unrelated to an individual complaint of discrimination.

127.2 The organization or other third party shall state the allegation with sufficient specificity so that the agency may investigate the allegations.

127.3 The agency may require additional specificity as necessary to proceed with its investigation.

127.4 The agency shall establish a file on each general allegation, and this file shall contain copies of all material used in making the decision on the allegation.

127.5 The agency shall furnish a copy of this file to the party submitting the allegation and shall make it available to the Director for review on request.

127.6 The agency shall notify the party submitting the allegation of its decision, including any corrective action taken on the general allegations, and shall furnish to the Director or the City Administrator, on request, a copy of its decision.

127.7 If the third party disagrees with the agency decision, it may within thirty (30) days after receipt of the decision, request the Director to review it.

127.8 The request shall be in writing and shall set forth with particularity the basis for the request.

127.9 Upon receipt of the request, the Director shall make, or require the agency to make, any additional investigation he or she deems necessary.

127.10 The Director shall issue a decision on the allegation ordering corrective action, as he or she considers appropriate.

127.11 Pursuant to § 114.4, either the third-party complainant or the agency may request the Director to reconsider the decision or to reopen the matter.

128 DISCRIMINATION COMPLAINTS IN OTHER PROCEEDINGS

128.1 Whenever an issue of discrimination as specified in § 101.1 is raised by a party in a grievance or adverse action proceeding before any appropriate agency of the District government, the hearing office shall inform the person raising the complaint of discrimination that the complaint will not be admitted as an issue in the grievance or adverse action proceeding and that the complaint should be submitted to the Director.

199 DEFINITIONS

199.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Act - the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Code § 2-1401.01 *et seq.*).

Age - eighteen (18) years of age or older, except that, in a case of employment, age shall be defined as eighteen (18) to sixty-five (65) years of age, unless otherwise defined by law.

Agency - any office, department, division, board, commission or other agency of the government of the District of Columbia with respect to which the Mayor or the Council are authorized by law to establish administrative procedures.

Day - a calendar day, unless otherwise specified.

Director - the Director of OHR, or his or her designee.

Disability - a physical or mental impairment that substantially limits one or more of the major life activities of an individual having a record of such an impairment or being regarded as having such an impairment.

Domestic partnership - the same meaning as that defined in section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)).

EEO Counselor - an individual appointed by the agency head, or his or her designee, to provide informal counseling in response to a complaint of discrimination by an employee or applicant and to conduct an informal inquiry with the affected parties, as directed, with the objective of resolving the complaint at the agency level.

EEO Officer - an individual appointed by the agency head, or his or her designee, to serve as administrator of the agency EEO Program, supervise the EEO Counselors, prepare EEO reports, and conduct discrimination investigations, as directed.

Employee - any individual employed by or seeking employment from an agency of the District of Columbia government.

Familial status - one or more individuals under 18 years of age being domiciled with: (1) a parent or other person having legal custody of the individual; or (2) the designee, with written authorization of the parent, or other persons having legal custody of individuals under 18 years of age. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual under 18 years of age.

Family responsibilities - the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of the number of such persons, including the state of being the subject of an order of withholding or similar proceedings for the purpose of paying child support or a debt related to child support.

Gender identity or expression - a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth.

Genetic information - information about the presence of any gene, chromosome, protein, or certain metabolites that indicate or confirm that an individual or an individual's family member has a mutation or other genotype that is scientifically or medically believed to cause a disease, disorder, or syndrome, if the information is obtained from a genetic test.

Intrafamily offense - an offense as defined in D.C. Official Code § 16-1001(5).

Marital status - the state of being married, in a domestic partnership, single, divorced, separated, or widowed and the usual conditions associated therewith, including pregnancy or parenthood.

Matriculation - the condition of being enrolled in a college, or university; or in a business, nursing, professional, secretarial, technical or vocational school; or in an adult education program.

OHR - the District of Columbia Office of Human Rights, as established by section 202 of the Act (D.C. Official Code § 2-1411.01).

Personal appearance - the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards. It shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied for admittance to a public accommodation, or when uniformly applied to a class of employees for a reasonable business purpose; or when such bodily conditions or characteristics, style or manner of dress or personal grooming presents a danger to the health, welfare or safety of any individual.

Position Statement- the initial response by the respondent in the discrimination claim to complainant's Charge of Discrimination.

Political affiliation - the state of belonging to or endorsing any political party.

Religion - any institutionalized system or personal set of attitudes, beliefs, and practices which relate to moral or ethical standards.

Sexual harassment - unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when the following occurs:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of employment;

(b) Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee; or

(c) The conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment may include, but is not limited to, verbal harassment or abuse, subtle pressure for sexual activity, patting or pinching, brushing against another employee's body, and demands for sexual favors.

Sexual orientation - male or female homosexuality, heterosexuality, and bisexuality, by preference or practice.

Source of income - the point, the cause, or the form of the origination, or transmittal of gains of property accruing to a person in a stated period of time; including, but not limited to, money and property secured from any occupation, profession or activity, from any contract, agreement or settlement, from federal payments, court-ordered payments, from payments received as gifts, bequests, annuities, life insurance policies and compensation for illness or injury, except in a case where conflict of interest may exist.

Persons desiring to comment on these proposed rules should submit comments in writing to the Office of Human Rights, Office of the General Counsel, 441 4th Street, N.W., Suite 570N, Washington, D.C. 20001, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 A.M. and 5:00 P.M. at the address stated above.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

FORMAL CASE NO. 1070, IN THE MATTER OF THE INVESTIGATION INTO THE POTOMAC ELECTRIC POWER COMPANY'S NON-AMI DEMAND RESPONSE PROGRAM PLAN

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Official Code,[1] of its intent to act upon the Application of the Potomac Electric Power Company ("Pepco" or "Company")[2] in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register.*

2. On January 20, 2010, Pepco filed an Updated Non-AMI Demand Response Program Plan with updated tariff pages, including a new Rider "R-DLC"-Residential Direct Load Control.[3] The Company states that the Updated Non-AMI Demand Response Program Plan takes advantage of the capabilities of the Company's planned deployment of an advanced metering system in the District of Columbia and the Company's award of a U.S. Department of Energy smart grid grant for the District of Columbia under the American Recovery and Reinvestment Act.[4]

3. Specifically, Pepco proposes to establish a new voluntary residential air conditioner Direct Load Control program ("DLC").[5] Under the program, Pepco proposes to offer all District of Columbia residential distribution customers with central air conditioners or central heat pumps the choice of the installation of an outdoor cycling switch or an indoor smart programmable thermostat ("direct load control equipment").[6] Pepco states that it anticipates that the deployed AMI System will provide the communication link to the deployed direct load

---

1 D.C. Code, § 2-505 (2001).

2 *Formal Case No. 1070, In the Matter of the Investigation into the Potomac Electric Power Company's Non-AMI Demand Response Program Plan ("F.C. 1070")*, Response of the Potomac Electric Power Company to Order No. 15629, Issued on December 7, 2009 in Formal Case No. 1056 and Formal Case No. 1070, Requesting the Company to Update its April 2, 2009 Non-AMI Demand Response Program Plan Filed in Formal Case No. 1070, filed January 20, 2010 ("Pepco's Updated Non-AMI Demand Response Program Plan").

3 *F.C. 1070*, Pepco's Updated Non-AMI Demand Response Program Plan.

4 *Id*. at 2. According to Pepco, this award, in addition to supporting the deployment of an AMI System, distribution automation, and distribution communication infrastructure will also partially fund the installation of residential direct load control program equipment.

5 *Id*.

6 *Id*. at 4.

control equipment by using the communication capabilities of the new meters.[7] According to the Company, the installation of this equipment will permit the Company to reduce high summer electric demand through the remote cycling of residential central electric air conditioner and heat pump compressors.[8] Finally, the Company proposes to recover program costs through a newly established customer residential demand side management (DSM) surcharge on the distribution portion of Pepco's electricity bill.[9]

4. Accordingly, Pepco seeks authority to revise and put into service the following tariff pages contained in its January 20, 2010 tariff filing:

POTOMAC ELECTRIC POWER COMPANY, P.S.C. of D.C. No. 1

51 Revised Page No. R-1

51 Revised Page No. R-2

44th Revised Page No. R-2.1

20th Revised Page No. 2.2

10th Revised Page No. R-3

10th Revised Page No. R-3.1

10th Revised Page No. R-4

10th Revised Page No. R-4.1

8th Revised Page No. R-5

8th Revised Page No. R-5.1

Original Page No. R-50

5. The Application is on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday or may be viewed on the Commission's website at www.dcpsc.org. Copies of the tariff pages are also available upon request, at a per-page reproduction cost.

6. All persons interested in commenting on Pepco's proposed Updated Non-AMI Demand Response Program Plan may submit written comments and reply comments no later than thirty (30) and forty-five (45) days, respectively, after publication of this NOPR in the *D.C. Register* with Dorothy Wideman, Commission Secretary, at the above address. After the comment period has expired, the Commission will take final action on Pepco's Application.

---

7 *Id*.

8 *Id*.

9 *Id*. at 16.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

GT97-3, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND ITS RATE SCHEDULE NO. 6,

GT06-1, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO AMEND GENERAL SERVICE PROVISION NO. 23,

and

FORMAL CASE NO. 1027, IN THE MATTER OF THE EMERGENCY PETITION OF THE OFFICE OF THE PEOPLE'S COUNSEL FOR AN EXPEDITED INVESTIGATION OF THE DISTRIBUTION SYSTEM OF WASHINGTON GAS LIGHT COMPANY,

1. The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to Section 2-505 of the District of Columbia Code,[1] of its intent to act upon the Application of Washington Gas Light Company ("WGL" or "Company")[2] in not less than 30 days from the date of publication of this Notice of Proposed Rulemaking ("NOPR") in the *D.C. Register*.

2. On February 26, 2010, WGL filed its Application to amend **Tariff Pages 21 and 22 of Rate Schedule No. 3A** and **Tariff Pages 44 and 57 of the General Service Provisions**. These changes describe how WGL is to recover past hexane costs that were deferred through December 30, 2009. This recovery was authorized by the Commission in Order No. 15627.[3]

3. The Application is on file with the Commission and may be reviewed at the Office of the Commission Secretary, 1333 H Street, N.W., Second Floor, West Tower, Washington, D.C. 20005, between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the tariff pages are available upon request, at a per-page reproduction cost. The Application is also available on the Commission's website at www.dcpsc.org.

---

1 D. C. Code, § 2-505 (2001 Ed.).

2 *Formal Case No. 1027, In the Matter of the Emergency Petition of the Office of the People's Counsel for an Expedited Investigation of the Distribution System of Washington Gas Light Company, GT97-3, GT06-1*, Letter to Dorothy Wideman, Commission Secretary, from Cathy Thurston-Seignious, Senior Attorney for Washington Gas Light Company, filed February 26, 2010 (hereinafter referred to as "Application").

3 *Formal Case Nos. 1027, GT97-3, GT06-1*, Order No. 15627, rel. December 11, 2009.

4. Comments on the proposed tariff application must be made in writing to Dorothy Wideman, Commission Secretary, at the above address. All comments must be received within 30 days of the date of publication of this NOPR in the *D.C. Register*. Persons wishing to file reply comments may do so no later than 45 days of the date of publication of this NOPR in the *D.C. Register*. Once the comment and reply comment periods have expired, the Commission will take final action on WGL's Application.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors of the District of Columbia Water and Sewer Authority ("the Board"), pursuant to the authority set forth in Section 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Code §§ 34-2202.03(3), (11) and 34-2202.16, Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Code § 2-505(a), and in accordance with 21 District of Columbia Municipal Regulations (DCMR) Chapter 40, hereby gives notice of its intention to amend Title 21 DCMR Water and Sanitation Regulations, Chapter 41, Retail Water and Sewer Rates, Section 4100 Rates for Water Service, Section 4101 Rates for Sewer Service, and Section 4102 Customer Assistance Program; and Chapter 1, Water Supply, Section 112 Fees.

The Board expressed its intention to amend the DCMR at its regularly scheduled Board meeting held on January 7, 2010 pursuant to Board Resolution # 10-10 and on February 4, 2010 pursuant to Board Resolutions # 10-28 and 10-29. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Comments on these proposed rules should be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to, Linda R. Manley, Secretary to the Board, District of Columbia Water and Sewer Authority, 5000 Overlook Ave., S.W., Washington, D.C. 20032, or email Lmanley@dcwasa.com. Copies of these proposed rules may be obtained from the Authority at the same address.

In addition, the Board will also receive comments on these proposed rates at a public hearing at a later date. The public hearing notice will be published in a subsequent edition of the District of Columbia Register.

I. Timing of Final Action on Proposed Rulemaking

No final action will be taken on the Rulemaking Proposal described in this notice until after each of the following events has occurred:

1. A public hearing is held to receive comments on the proposed rulemaking.

2. The public comment period on this rulemaking expires; and

3. The Board of Directors takes final action after public comments are considered.

II. Rulemaking Proposal

The following rulemaking action is proposed:

Title 21 DCMR, Chapter 41 RETAIL WATER AND SEWER RATES, Section 4100 RATES FOR WATER SERVICE, Subsection 4100.3 is amended to read as follows:

4100 RATES FOR WATER SERVICE

4100.3 The rate for retail metered water service shall be:

(a) Effective October 1, 2010, increased from Two Dollars and Fifty-One Cents ($2.51) to Three Dollars and Ten Cents ($3.10) for each One Hundred Cubic Feet ("CCF") of water used.

Title 21 DCMR, CHAPTER 41 RETAIL WATER AND SEWER RATES, Section 4101 RATES FOR SEWER SERVICE is amended to read as follows:

4101 RATES FOR SEWER SERVICE

4101.1 The rates for sanitary sewer service shall be:

(a) Effective October 1, 2010, the retail sanitary sewer service rate shall be increased from Three Dollars and Sixty-One Cents ($3.61) to Three Dollars and Seventy-Nine Cents ($3.79) for each One Hundred Cubic Feet ("CCF") of water used; and

(b) Effective October 1, 2010, the annual Impervious Surface Area Charge ("IAC") shall be increased from Twenty-Six Dollars and Forty Cents ($26.40) to Forty-One Dollars and Forty Cents ($41.40) per Equivalent Residential Unit ("ERU"). The charge per ERU shall be billed monthly at Three Dollars and Forty-Five Cents ($3.45) for each ERU.

4101.2 The IAC shall be based upon the Equivalent Residential Unit ("ERU"). An ERU is defined as one-thousand (1,000) square feet of impervious surface area, taking account of a statistical median of residential properties.

4101.3 All residential customers shall be assessed an IAC based on the following Six-Tier Residential Rate Structure for the IAC:

Tier	Size of Impervious Area (Square Feet)	Equivalent Residential Unit (ERU)
Tier 1	100 -600	0.6
Tier 2	700 -2000	1.0
Tier 3	2,100 -3,000	2.4
Tier 4	3,100-7,000	3.8
Tier 5	7,100 -11000	8.6
Tier 6	11,100 and more	13.5

Title 21 DCMR, CHAPTER 41 RETAIL WATER AND SEWER RATES, Section 4102 CUSTOMER ASSISTANCE PROGRAM is amended to read as follows:

4102 CUSTOMER ASSISTANCE PROGRAM

4102.1 CUSTOMER ASSISTANCE PROGRAM FOR HOUSEHOLDS AND TENANTS

(a) Eligible households and tenants will receive an exemption from water service charges, sewer service charges, and Payment in Lieu of Taxes ("PILOT") and Right of Way ("ROW") fees for the first Four Hundred Cubic Feet (4 CCF) per month of water used. If the customer uses less than 4 CCF of water in any month, the exemption will apply to that month's actual water usage.

(b) Participation in the Customer Assistance Program is limited to single-family residential accounts and individually metered tenant accounts when the eligible applicant is responsible for paying for water services.

(c) Eligibility is determined by the District of Columbia Department of Environment Energy Office.

Title 21 DCMR, Chapter 1 WATER SUPPLY, Section 112 FEES, Subsection 112.8 RIGHT OF WAY OCCUPANCY FEE PASS THROUGH CHARGE /PILOT FEE is amended to read as follows:

112.8 RIGHT OF WAY OCCUPANCY FEE PASS THROUGH CHARGE / PILOT FEE - The Right of Way Occupancy Fee Pass Through Charge / Payment in Lieu of Taxes ("PILOT") Fee, assessed to recover the cost of fees charged by the District of Columbia to the Water and Sewer Authority for use of District of Columbia public space and rights of ways, shall be as follows:

(a) Effective October 1, 2010, the Right of Way Occupancy Fee Pass Through Charge / PILOT Fee shall be increased from Fifty-Seven Cents ($0.57) to Sixty-Three Cents ($0.63) for each One Hundred Cubic Feet ("CCF") of water used, divided as follows:

(1) Payment in Lieu of Taxes to the Office of the Chief Financial Officer ("OCFO") of the District of Columbia, Forty-Nine Cents ($0.49) per CCF; and

(2) District of Columbia Right of Way Fee, Fourteen Cents ($0.14) per CCF.

Title 21 DCMR, Chapter 1 WATER SUPPLY, Section 112 FEES is amended by adding a new Subsection 112.9, CUSTOMER METERING FEE to read as follows:

112.9 Customer Metering Fee – Monthly fees for installing, operating, and maintaining meters shall be as follows:

Meter Size (inches)	Monthly Fee per Meter
5/8"	$3.86
3/4"	$4.06
1	$4.56
1x1.25	$4.83
1.5	$6.88
1x1.5	$6.88
2	$7.54
2x1/2	$8.00
2x5/8	$8.00
3	$76.98
3x5/8	$77.94
3x1	$77.94
3x3/4	$77.94
4	$137.37
4x3/4	$138.15
4x1	$138.15
4x1.5	$138.15
4x2	$138.15
4x2"5/8	$181.04
6	$268.14
6 x 1	$272.70
6 x 1 x 1/2	$323.09
6x1.5	$323.09
6x3	$323.09
6x3x1/2	$323.09
6x3"3/4	$323.09
8	$323.29
8x2	$323.29
8x4x1	$358.26
8x4”3/4	$358.26
10	$317.91
10x2	$403.62
10x6	$403.62
10x6x1	$403.62
12	$329.66
12x6	$329.66
16	$349.45

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
Z.C. Case No. 10-01
(Text Amendment – 11 DCMR)
(Text Amendments to Allow Increased FAR for Buildings Located in a TDR Receiving Zone and Either Developed as Part of an Approved New Community Plan or Funded by the District for Affordable Housing Purposes)

The Zoning Commission for the District of Columbia, pursuant to its authority under §§ 1 and 3 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 798; D.C. Official Code §§ 6-641.01, 6-641.03), hereby gives notice of its intent to amend the Zoning Regulations, Title 11 DCMR, by adding a new § 771.4.

The proposed text amendments would allow increased density and height for projects that are 1) located in a Receiving Zone as defined in Chapter 17, 11 DCMR, and 2) either developed as part of a D.C. Council approved New Community Plan; or that qualify as a low or moderate income subsidized housing development pursuant to § 3042.2 of the Zoning Regulations, which defines low or moderate income subsidized housing development as a housing development that receives funding from a recognized District of Columbia or federal government housing subsidy program, with low or moderate income levels as established by the U.S. Department of Housing and Urban Development.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to Title 11 of the District of Columbia Municipal Regulations (ZONING) are proposed:

CHAPTER 7, COMMERCIAL DISTRICTS, § 771 Floor Area Ratio, is amended by inserting a new paragraph § 771.4 to read as follows:

771.4 As an alternative to purchasing transferable development rights to achieve additional density as permitted in the receiving zones described in §§ 1709.15 through 1709.19, a building or structure located in any such zones that is being developed as part of an approved New Community Plan approved by the Council of the District of Columbia or that qualify as a low or moderate income subsidized housing development as defined in § 3042.2 ("Eligible Projects") may utilize the following additional density as a matter of right, provided that the Zoning Administrator determines that the proposed building or structure is not inconsistent with the approved New Community Plan, if applicable, or the Comprehensive Plan:

(a) Eligible Projects located in the New Downtown, North Capitol, Capitol South, and Southwest receiving zones may be constructed to a maximum FAR of 10.0 for buildings permitted a height of one hundred thirty feet (130 ft.), and 9.0 for buildings permitted a lesser height; or

(b) Eligible Projects located in the Downtown East receiving zone may be constructed to a maximum FAR of 9.0.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.